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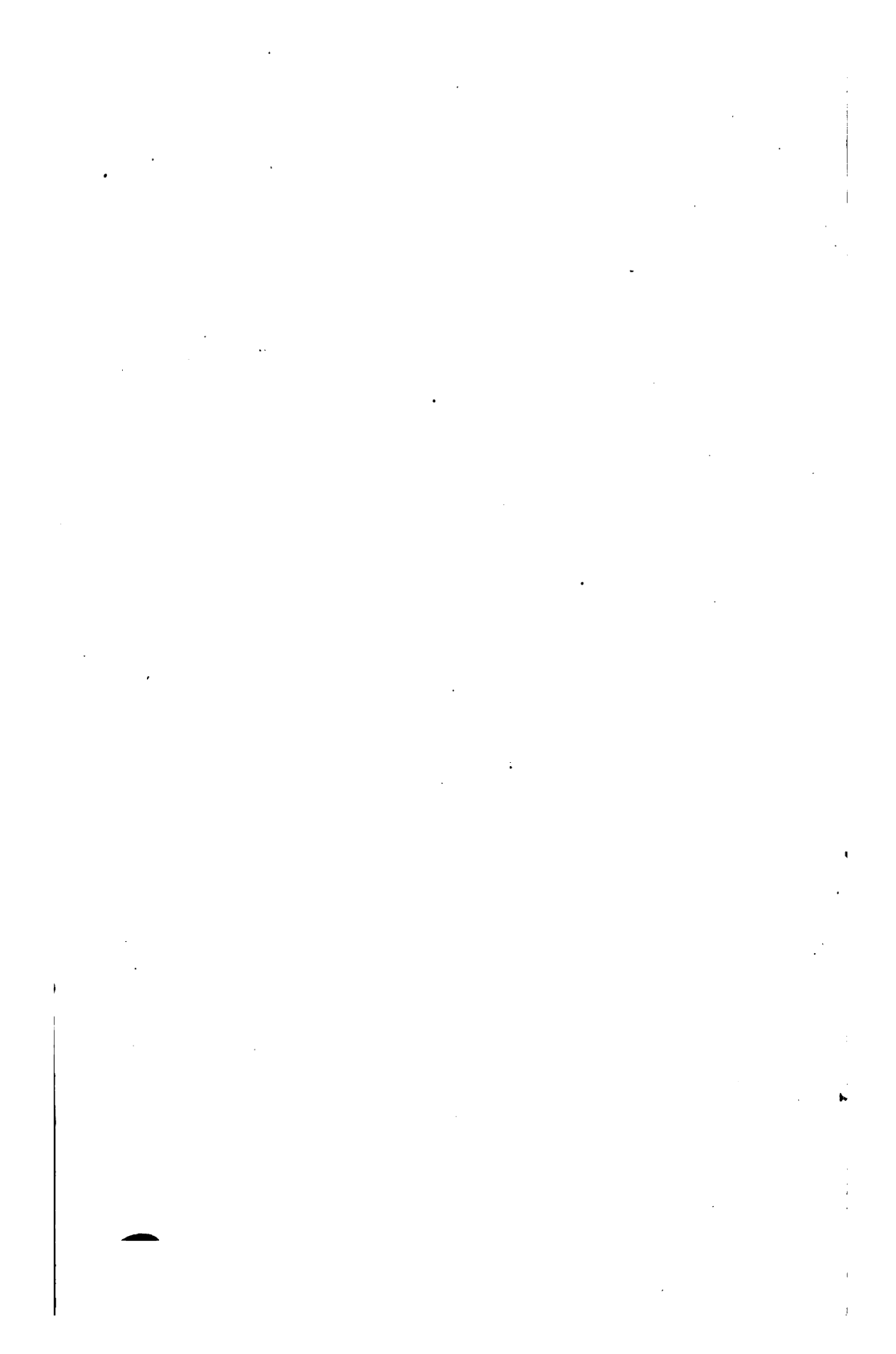
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THE  
LAW OF LIBEL

*In its relation to the Press,*

TOGETHER WITH THE

LAW OF LIBEL AMENDMENT ACT, 1888,

AND ALL PREVIOUS STATUTES BEARING ON THE SUBJECT.

BY

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LONDON :

REEVES & TURNER,

100, CHANCERY LANE, AND CAREY STREET,

Law Booksellers and Publishers.

1889

LONDON :

PRINTED BY C. F. BOWORTH, GREAT NEW STREET, FETTER LANE—E.C.

## PREFACE.

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THIS Work does not profess to be an exhaustive treatise on the law of libel, but merely a useful and practical hand-book on the Law of Newspaper Libel, and is primarily designed to meet the requirements of those connected with the Press. I have stated the law in the form of propositions followed by explanatory notes, and have discussed the various difficult and complicated questions which arise on the construction of the Law of Libel Amendment Act, 1888. The date of every case cited is given, and, so far as I know, a reference to every report of it.

I have only treated the subject of procedure incidentally, or where it called for special notice. Believing, however, that it might be useful, I have inserted in Appendix A. a short sketch of the proceedings before a stipendiary magistrate, or two justices of the peace. Appendix B. contains the text of all the statutes bearing on the law of libel in its relation to the press, together with references to the particular pages at which each section is dealt with, which will, I trust, add to the value of the Work.

H. F.

2, CLOISTERS, TEMPLE, E.C.

Nov. 7, 1889.





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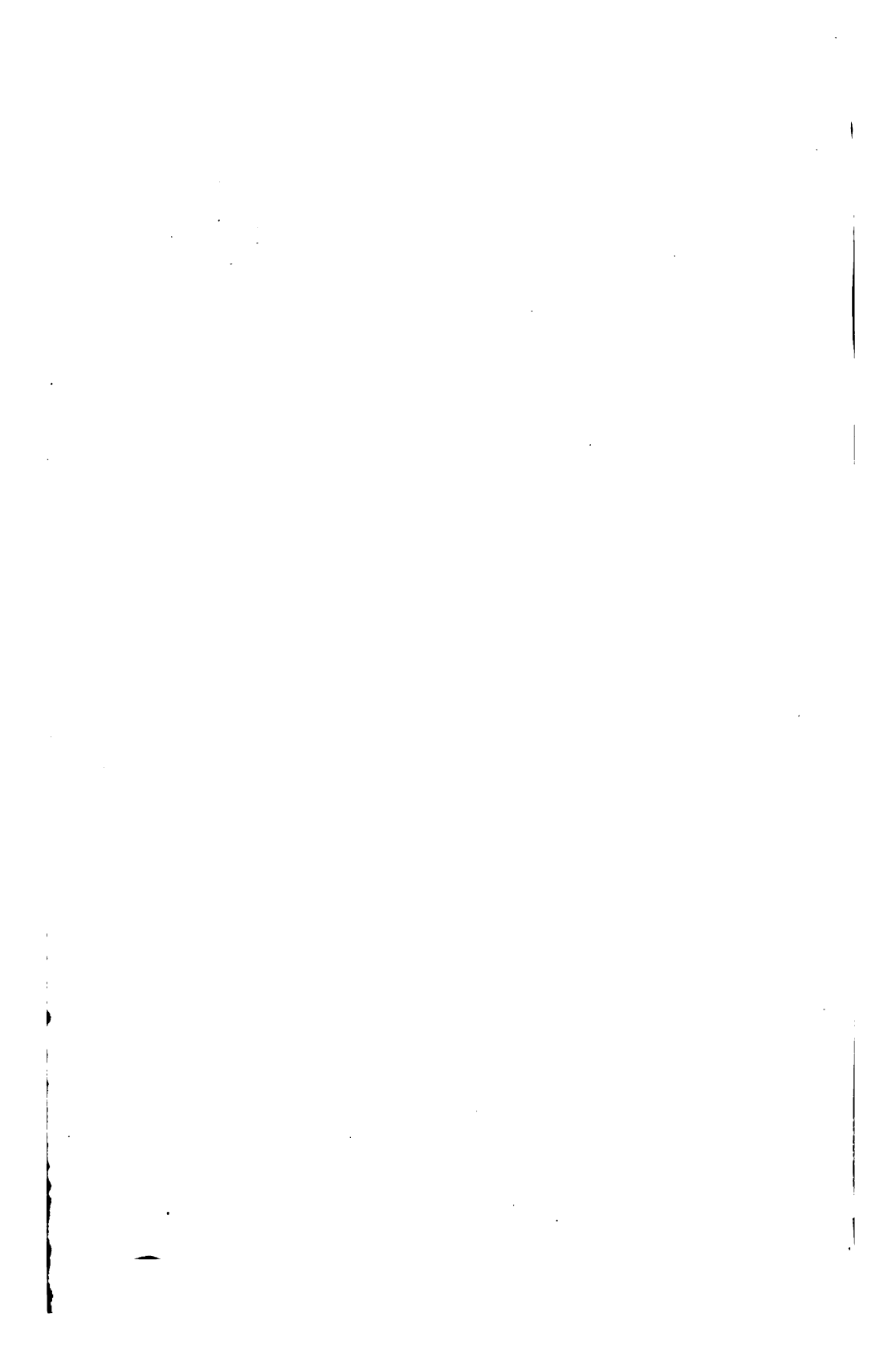
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## LIST OF ABBREVIATIONS.



A. & E.	-	-	-	Adolphus and Ellis.
Am.	-	-	-	American.
App. Cas.	-	-	-	Appeal Cases.
Atk.	-	-	-	Atkyns.
B. & Ad.	-	-	-	Barnewell and Adolphus.
B. & Ald.	-	-	-	Barnewell and Alderson.
B. & C.	-	-	-	Barnewell and Cresswell.
B. & P. N. R.	-	-	-	Bosanquet and Puller, New Reports.
B. & S.	-	-	-	Best & Smith.
Barn.	-	-	-	Barnardiston.
Beav.	-	-	-	Beavan.
Bing.	-	-	-	Bingham.
Bing. N. C.	-	-	-	Bingham, New Cases.
Br. & Bing.	-	-	-	Broderip & Bingham.
Bur.	-	-	-	Burrow.
C. & E.	-	-	-	Cababé and Ellis.
C. & K.	-	-	-	Carrington and Kirwan.
C. & P.	-	-	-	Carrington and Payne.
C. B.	-	-	-	Common Bench Reports.
C. B. N. S.	-	-	-	Common Bench, New Series.
C. L. R.	-	-	-	Common Law Reports.
C. M. & R.	-	-	-	Crompton, Meeson and Roscoe.
C. P.	-	-	-	Common Pleas (L. R. and L. J.).
C. P. D.	-	-	-	Common Pleas Division (L. R.).
Cal.	-	-	-	California.
Camp.	-	-	-	Campbell.
Ch.	-	-	-	Chancery (L. R. and L. J.).
Ch. D. or Ch. Div.	-	-	-	Chancery Division (L. J.).
Chit.	-	-	-	Chitty.
Coke's Rep.	-	-	-	Coke's Reports.
Cox, C. C.	-	-	-	Cox's Criminal Cases.
Cro. Car.	-	-	-	Croke, temp. Charles.
Cro. Eliz.	-	-	-	Croke, temp. Elizabeth.

F.

D. & L. -	-	-	Dowling and Lowndes.
D. & R. -	-	-	Dowling and Ryland.
Dick. -	-	-	Dickens.
Dougl. -	-	-	Douglas.
Dow, H. L. -	-	-	Dow's Reports, House of Lords.
Dowl. N. S. -	-	-	Dowling, New Series.
E. & B. -	-	-	Ellis and Blackburn.
E. & E. -	-	-	Ellis and Ellis.
E. B. & E. -	-	-	Ellis, Blackburn and Ellis.
Eq. -	-	-	Equity (L. R.).
Esp. -	-	-	Espinasse.
Ex. -	-	-	Exchequer Reports; Exchequer (L. R. and L. J.).
Ex. Ch., C. B. N. S. -	-	-	Exchequer Chamber, Common Bench Reports, New Series.
Ex. D. or Ex. Div. -	-	-	Exchequer Division (L. R.).
Ex. Rep. -	-	-	Exchequer Reports.
F. & F. -	-	-	Foster and Finlason.
Fitz. -	-	-	Fitzgibbon.
H. & C. -	-	-	Hurlstone and Coltman.
H. & N. -	-	-	Hurlstone and Norman.
H. L. -	-	-	House of Lords (L. R.).
H. of L. C. -	-	-	House of Lords Cases, by Clark and Finnely, continued by Clark.
Harg. St. Tr. -	-	-	Hargreave's State Trials.
Hob. -	-	-	Hobart.
Horn & H. -	-	-	Horn and Hurlstone.
How. St. Tr. -	-	-	Howell's State Trials.
Ir. L. R. -	-	-	Irish Law Reports.
J. P. -	-	-	Justice of the Peace.
Jur. N. S. -	-	-	Jurist, New Series.
L. J. -	-	-	Law Journal.
L. J. M. C. -	-	-	Law Journal, Magistrates' Cases.
L. J. N. C. -	-	-	Law Journal, New Cases.
L. R. -	-	-	Law Reports.
L. R. Ir. -	-	-	Law Reports, Irish.
Lev. -	-	-	Levinz.
Lewin, C. C. -	-	-	Lewin's Crown Cases.
M. & G. -	-	-	Manning and Granger.
M. & M. -	-	-	Moody and Malkin.
M. & P. -	-	-	Moore and Payne.
M. & Rob. -	-	-	Moody and Robinson.
M. & S. -	-	-	Maule and Selwyn.
M. & W. -	-	-	Meeson and Welsby.

M. P. C. C.	-	-	Moore's Privy Council Cases.
Mod.	-	-	Modern Reports.
N. & P.	-	-	Neville and Perry.
P. & D.	-	-	Perry and Davison.
Poph.	-	-	Popham.
Q. B.	-	-	Queen's Bench Reports; Queen's Bench (L. R. and L. J.).
Q. B. D.	-	-	Queen's Bench Division (L. R. and L. J.).
Rep.	-	-	Coke's Reports.
Ry. & M.	-	-	Ryan and Moody.
Sess. Cas.	-	-	Sessions Cases.
St. Tr.	-	-	State Trials.
Stark.	-	-	Starkie.
T. R.	-	-	Term Reports.
Taunt.	-	-	Taunton.
Times L. R.	-	-	Times Law Reports.
Townsend's Mod. St. Tr.			Townsend's Modern State Trials.
W. B.	-	-	William Blackstone.
W. N.	-	-	Weekly Notes.
W. B.	-	-	Weekly Reporter.
W. W. & D.	-	-	Willmore, Wollaston and Davison.
W. W. & H.	-	-	Willmore, Wollaston and Hodges.
Wils.	-	-	Wilson.





# THE LAW OF LIBEL IN ITS RELATION TO THE PRESS.

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## PART I. OF LIABILITY TO A CIVIL ACTION.

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### ARTICLE 1.—*Definition of Libel.*

A LIBEL is a false representation in writing, printing, or other material form injurious to the reputation of any person (*a*).

NOTE.—“Injurious to the reputation,” *i.e.*, of a disparaging nature,—anything which exposes the plaintiff to hatred, contempt, ridicule, or obloquy, or causes him to be shunned or avoided, or has a tendency to injure him in his occupation (*b*). Thus, it has been held libellous to write

(*a*) Objection may be taken to the above definition, on the ground that it contains no reference to publication. But careful consideration has led me to think that it tends to accuracy of expression and clearness of thought to omit all such reference. Moreover, this course is justified by the language of the judges in the cases touching publication (*e.g.*, *per* Lord Coke in *John Lamb's case* (1610), 9 Rep. fol. 60; Wood, B., in *Maloney v. Bartley* (1812), 3 Camp. 212; Lord Erskine in *Burdett v. Abbot* (1817), 5 Dow, H. L. 201; Best, C. J., in *De Crespigny v. Wellesley* (1829), 5 Bing. 402), where such phrases as “the publication of a libel,” “where anyone publishes a libel,” are of constant occurrence, showing clearly that the term libel is used in accordance with the meaning ascribed to it in the above definition.

(*b*) For examples of libels on journalists, see *Heriot v. Stuart*

of a man that he is ungrateful (*c*), impecunious (*d*), insane (*e*), and even in one case, *Churchill v. Hunt* (*f*), that his conduct had been unfeeling.

Libel is to be distinguished from slander—the former is addressed to the eye, the latter to the ear—in other words, in the case of libel, the defamatory matter is in some permanent form, usually in writing or printing, though not necessarily so, *e.g.*, an effigy (*g*), or statue (*h*), may constitute a libel. Slander, on the other hand, is always in the form of spoken words.

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### ARTICLE 2.—*The Innuendo.*

The innuendo is an averment in the plaintiff's statement of claim, specifying the libellous meaning of the words complained of, and showing how they come to have that meaning, and how they relate to the plaintiff.

NOTE.—No innuendo is necessary where the words complained of are libellous in their ordinary meaning (*i*). On the other hand, where the words complained of are not libellous in their ordinary meaning, or unless used with a special application, the use of an innuendo is essential to show the cause of action (*j*).

(1796), 1 Esp. 437; *Wakley v. Cooke and Healey* (1849), 19 L. J. Ex. 91; 4 Ex. 511; *Campbell v. Spottiswoode* (1863), 32 L. J. Q. B. 185; 8 L. T. 201; 3 B. & S. 769; 9 Jur. N. S. 1069; 11 W. R. 569; *Russell and another v. Webster* (1874), 23 W. R. 59.

(*c*) *Cox v. Lee* (1869), L. R. 4 Ex. 284; 38 L. J. Ex. 219.

(*d*) *Eaton v. Johns* (1842), 1 Dowl. N. S. 602.

(*e*) *Morgan v. Lingen* (1863), 8 L. T. N. S. 800.

(*f*) (1819), 2 B. & Ald. 685; 1 Chit. 480.

(*g*) 5 Rep. 125.

(*h*) *Hawkins' Pleas of the Crown*, 8th ed. 542.

(*i*) *Russell and another v. Webster* (1874), 23 W. R. 59.

(*j*) *Per Lord Selborne in Capital and Counties Bank v. Henty* (1882), 7 App. Cas. at p. 748.

The question whether the words are capable of the alleged meaning, and whether such meaning is actionable, is for the judge; the question whether, under the circumstances of the case, they bear such meaning, is for the jury (*k*).

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ARTICLE 3.—*No action without publication.*

No action can be maintained for libel unless there be publication, *i. e.*, a communication of the words complained of to one person other than the plaintiff.

NOTE.—The sale of each copy of the newspaper containing the libel is a publication thereof (*l*), rendering the distributor as well as his principal responsible for the libel. So, too, is the delivery of a libellous manuscript to the printer (*m*), and it would seem even the delivery of the newspaper to a government official as required by law (*n*). But in all these cases it is open to the defendant to show that he did not in fact publish the libel, which he can do by proving that he “did not know that the paper contained . . . or was likely to contain a libel,” and that he “ought not to have known it, having used reasonable care” (*o*). Thus he is not liable where he cannot

(*k*) *Capital and Counties Bank v. Henty* (1882), 7 App. Cas. 741; 52 L. J. Q. B. 232; 47 L. T. 662; 47 J. P. 214; 31 W. R. 157.

(*l*) *Duke of Brunswick v. Harmer* (1849), 19 L. J. Q. B. 20; 3 C. & K. 10; 14 Jur. 110; 14 Q. B. 185.

(*m*) *Baldwin v. Elphinston* (1775), 2 W. Bl. 1037; *Watts v. Fraser and another* (1835), 6 L. J. K. B. 226; 7 Ad. & E. 223; 7 C. & P. 369; 1 Jur. 671; 1 M. & Rob. 449; 2 N. & P. 157; W. W. & D. 451.

(*n*) *Rex v. Amphitt* (1825), 4 B. & C. 35; 6 D. & R. 125.

(*o*) *Per Lord Esher, M. R., in Emmens v. Pottle and Son* (1885), 16 Q. B. D. p. 357. See also *per Bowen, L. J.*, at p. 358.

read (*o*), or where he has carried the libel in a sealed letter (*p*), or in a parcel containing handbills (*q*).

There is also a *prima facie* case of publication against the defendant where the manuscript from which the libel was printed is shown to be in his handwriting, there being no necessity to prove expressly that he ordered or authorized the printing (*r*).

ARTICLE 4.—*Is the question of publication for the judge or the jury?*

The jury find whether the facts on which it is endeavoured to prove publication are true, but the judge decides whether the facts as proved constitute a publication.

ARTICLE 5.—*How to discover the printer and proprietor of a newspaper, and to prove publication.*

Every paper or book which is meant to be published or dispersed must bear on it the name and address of the printer (*s*); and the printer

(*o*) *Per* Lord Kenyon, C. J., in *Rex v. Holt* (1792), 5 T. R. 144.

(*p*) *Per* Lord Kenyon, C. J., in *Rex v. Topham* (1791), 4 T. R. 129.

(*q*) *Day v. Bream* (1837), 2 Moo. & R. 55.

(*r*) *Per* Holt, C. J., in *Rex v. Beere* (1698), 12 Mod. 221; 1 Lord Raym. 414; *per* Lord Erskine in *Burdett v. Abbot* (1811), 5 Dow, H. L. at p. 201; *Adams v. Kelly* (1824), Ry. & M. 157; *Tarpley v. Blabey* (1836), 2 Bing. N. C. 437; 7 C. & P. 395; 1 Hodges, 414; 2 Scott, 642; *Bond v. Douglas* (1836), 7 C. & P. 626; *Reg. v. Lovett* (1838), 9 C. & P. 462; *per* Byles and Mellor, JJ., in *Parkes v. Prescott and another* (1869), L. R. 4 Ex. 181—186; 38 L. J. Ex. 105; 20 L. T. 173; 17 W. R. 773.

(*s*) 2 & 3 Vict. c. 12, s. 2.

must for six calendar months carefully preserve at least one copy of each paper printed by him, and write thereon the name and address of the person who employed and paid him to print it (*t*).

A register of newspaper proprietors is established at Somerset House (*u*), which is open to the inspection of any person on payment of one shilling (*x*). It is the duty of the printers and publishers of every newspaper to make a return to the registry office each July, containing the title of the newspaper and the names, occupations, and addresses (business and residential) of all the proprietors of the paper (*y*); and a certified copy of an entry in this register is sufficient *primâ facie* evidence of all matters and things thereby appearing (*z*).

NOTE.—This system of registration, excellent as it is, is not, however, perfect. For, in the first place, if the newspaper is published by a limited company the Act has no application (*a*), and the plaintiff will search the register in vain. In the second place, even when the defendant is not a limited company, the plaintiff cannot be quite sure that the defendant was proprietor of the newspaper at the time the libel was published merely because his name appears on the register, for since the return was made he may have ceased to be proprietor; and though the transfer of interest *may* (*b*) have been registered by either party thereto, there is no provision which renders it illegal not to do so.

The plaintiff may of course fix the defendant with proprietorship at the time of publication by administering interrogatories, or by proving that the newspaper was

(*t*) 39 Geo. 3, c. 79, s. 29.

(*u*) 44 & 45 Vict. c. 60, s. 8.

(*x*) *Ibid.* ss. 13, 14.

(*y*) *Ibid.* s. 9.

(*z*) *Ibid.* s. 15.

(*a*) *Ibid.* s. 18.

(*b*) Under s. 11.

bought from the defendant, or on the defendant's premises.

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ARTICLE 6.—*Damage presumed.*

For every libel an action (*b*) for damages will lie, even though no special damage can be proved.

NOTE.—In this respect there is a remarkable difference between libel and slander. In the case of libel, *i. e.*, where the defamatory words are *written*, the law presumes that of necessity the person defamed has suffered damage, and therefore he is entitled to maintain an action, even though he does not and cannot prove that he has suffered any material injury or loss, or as it is technically called “special damage.”

On the other hand, in the case of slander, *i. e.*, where the defamatory words are merely *spoken*, the plaintiff cannot succeed unless he prove that he has suffered special damage, except in three cases—

(1) Where the words charge him with having committed a criminal offence (*c*);

(2) Where the words impute to the plaintiff that he has an infectious or contagious disease, tending to exclude him from society (*d*);

(3) Where they are spoken of him in relation to his trade, profession, or business (*e*).

(*b*) No action for libel can be brought in the County Court, except by consent (51 & 52 Vict. c. 43, ss. 56, 64).

(*c*) *Webb v. Beavan* (1883), 11 Q. B. D. 609; 52 L. J. Q. B. 544; 49 L. T. 201; 47 J. P. 488.

(*d*) *Villers v. Monsley* (1769), 2 Wils. 403.

(*e*) *Phillips v. Jansen* (1798), 2 Esp. 624.

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ARTICLE 7.—*Intention immaterial.*

Except in cases of qualified privilege (*f*), the intention with which the libel was published is immaterial (*g*), and the defendant will not be excused on the ground that he published the libel by accident or mistake (*h*), or with an honest belief in its truth (*i*).

NOTE.—Thus the defendant was held liable in *Cook v. Ward* (*j*), where the plaintiff told some friends an absurd story about himself, and the defendant published it in his newspaper, simply for the purpose of amusing his readers, and believing that the plaintiff would not object. And in *Blake v. Stevens and others* (*k*), the plaintiff obtained 100*l.* damages against the defendants for the publication of a libellous statement, which had been inserted by mistake in a law book of which they were the publishers.

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ARTICLE 8.—*Who is liable for a libel in a newspaper or journal.*

The following persons are liable for the publication of a libel in a newspaper or journal:—

(1.) The proprietor (*l*).

(*f*) See Article 16, Notes 1 and 3 and Articles 17—20, *infra*.

(*g*) *Cook v. Ward* (1830), 6 Bing. 409; 4 M. & P. 99.

(*h*) *Blake v. Stevens and others* (1864), 11 L. T. 543; 4 F. & F. 232; *Shepherd v. Whitaker* (1875), L. R. 10 C. P. 502; 32 L. T. 402.

(*i*) *Blackburn v. Blackburn* (1827), 4 Bing. 395; 3 C. & P. 146; 1 M. & P. 33, 63; *per* Maule, J., in *Wenman v. Ash* (1853), 22 L. J. C. P. 190; 13 C. B. 836; 1 C. L. R. 592; 17 Jur. 579; *Humley v. Ward* (1859), 6 C. B. N. S. 514; 1 F. & F. 552; 6 Jur. N. S. 18.

(*j*) (1830), 6 Bing. 409; 4 M. & P. 99.

(*k*) (1864), 11 L. T. 543; 4 F. & F. 232.

(*l*) *Charlton v. Watton* (1834), 6 C. & P. 385; *Colburn v. Patmore*

- (2.) The publisher (*m*).
- (3.) The editor (*n*).
- (4.) The printer (*o*).
- (5.) The author (*p*).
- (6.) Any person who utters (*q*), gives (*r*), sells (*s*), or lends a copy of the newspaper or journal.

Each or all of such persons may be proceeded against, and that some one of them has been already sued, and heavy damages recovered against him, is no defence (*t*) to an action brought

(1834), 1 O. M. & R. 73; 4 Tyr. 677; *Davison v. Duncan* (1857), 26 L. J. Q. B. 104; 28 L. T. O. S. 265; 7 El. & B. 229; 3 Jur. N. S. 613; 5 W. R. 253; *Popham v. Pickburn* (1862), 31 L. J. Ex. 133; 5 L. T. 846; 7 H. & N. 891; 26 J. P. 646; 8 Jur. N. S. 179; 10 W. R. 324.

(*m*) *Blake v. Stevens and others* (1864), 11 L. T. 543; 4 F. & F. 232.

(*n*) *De Crespigny v. Wellesley* (1829), 5 Bing. 392; 2 M. & P. 695; *Colburn v. Patmore*, *supra*; *Watts v. Fraser and another* (1835), 6 L. J. K. B. 226; 7 Ad. & E. 223; 7 C. & P. 369; 1 Jur. 671; 1 M. & Rob. 449; 2 N. & P. 157; W. W. & D. 451; *Keyzor and another v. Newcomb* (1859), 1 F. & F. 559.

(*o*) *Johnson v. Hudson* (1836), 7 A. & E. 233, n.

(*p*) *Burdett v. Abbot* (1811), 5 Dow, H. L. 201; *Adams v. Kelly* (1824), Ry. & M. 557; *Tarpley v. Blabey* (1836), 2 Bing. N. C. 437; 7 C. & P. 395; 1 Hodges, 414; 2 Scott, 642; *Bond v. Douglas* (1836), 7 C. & P. 626; *Frescoe v. May* (1860), 2 F. & F. 123; *per Byles and Mellor, JJ.*, in *Parkes v. Prescott and Ellis* (1869), L. R. 4 Ex. 181—186.

(*q*) *Hearne v. Stowell* (1840), 11 L. J. Q. B. 25; 12 A. & E. 719; 6 Jur. 458; 4 P. & D. 696.

(*r*) *Per Wood, B.*, in *Maloney v. Bartley* (1812), 3 Camp. 213.

(*s*) *Duke of Brunswick v. Harmer* (1849), 19 L. J. Q. B. 20; 3 C. & K. 10; 14 Jur. 110; 14 Q. B. 185; but see note to Article 3, *supra*, and *Emmens v. Pottle*, *Day v. Bream*, *Rex v. Holt*, *Rex v. Topham*, there cited.

(*t*) See, however, Part I., Articles 27—29, *infra*, as to evidence in mitigation of damages and consolidation of actions under the Law of Libel Amendment Act, 1888.



against any of the others in respect of the same libel (*u*).

Where, however, the same libel has been published upon two separate and distinct occasions, a defendant who was responsible for the first publication, but in no way concerned with the second, would not be liable for any damage which he could prove was solely caused by the second publication, and in no way the result of the first.

NOTE 1.—In most cases of newspaper libel the proprietor, however, is alone sued, for his name and address can be discovered without any difficulty at Somerset House, room No. 7. Moreover, he will not, as a rule, disclose the name of the author of the libel, nor can he be compelled to do so (*x*). If the publisher has, in the first instance, been sued, the proprietor will, upon the hearing of a summons before a Master in Chambers, be made a co-defendant (*y*). So far as liability to an action is concerned, the position of the defendant is in no way altered by the fact that the publication was without his knowledge or in his absence. That is no answer to a *civil action*, though, as we shall see, it affords a defence to *criminal proceedings* (*z*). Thus the proprietor of a newspaper is civilly liable for an accidental slip caused by his printer's man in setting up the type (*a*), and for a libellous advertisement inserted by the editor without his knowledge (*b*).

NOTE 2.—The publisher is also liable in a civil action

(*u*) *Harrison v. Pearce* (1858), 32 L. T. O. S. 298; 1 F. & F. 567; *Frescoe v. May*, *supra*; *Colledge v. Pike* (1886), 56 L. T. 124; *Tucker v. Lawson* (1886), 2 Times L. R. 593.

(*x*) *Gibson v. Evans*, W. N. 1889, p. 135.

(*y*) *Edwards v. Louther* (1876), 45 L. J. C. P. 417; 34 L. T. 255; 24 W. R. 434.

(*z*) See Part II., Article 7, pp. 64, 65, *infra*.

(*a*) *Shepherd v. Whitaker* (1875), L. R. 10 C. P. 502.

(*b*) *Harrison v. Pearce* (1858), 32 L. T. O. S. 298; 1 F. & F. 567.

for all libels appearing in the paper, although their insertion was unknown to him (c).

NOTE 3.—An editor is responsible for all libels appearing in the newspaper which he edits, even though he is ignorant of the fact of their insertion. “If you look upon the editor as a person who has published a libellous advertisement incautiously, of course he is liable” (d).

In *Watts v. Fraser and Moyes* (e), both editor and printer were held liable for a libellous illustration, although they had never seen it, on the ground that the illustration was referred to in the accompanying letter-press, which had been printed by their servants.

NOTE 4.—Although the printer of a newspaper is responsible for all libels appearing therein, he is not generally sued, inasmuch as he will usually state the name of the person by whom he is employed. There is no reason for his refusing to do so; indeed, by 39 Geo. 3, c. 79, s. 29, every person who prints any paper for hire, reward, gain, or profit, must preserve one copy (at least) of the paper printed by him, on which he shall write or print the name and place of abode of his employer, and an omission to comply with this provision, or to keep the said copy for six calendar months, or to show it when required to a justice of the peace, is punishable by fine.

NOTE 5.—The author or actual composer of any libel which appears in a newspaper is liable for the damage caused thereby, if it can be proved that he requested,

(c) *Blake v. Stevens and others* (1864), 11 L. T. 543; 4 F. & F. 232.

(d) *Per Pollock, C. B.*, in *Keyzor and another v. Newcomb* (1859), 1 F. & F. 559.

(e) (1835), 6 L. J. K. B. 226; 7 Ad. & E. 223; 7 C. & P. 369; 1 Jur. 671; 1 M. & Rob. 449; 2 N. & P. 157; W. W. & D. 451.

procured, or authorized the publication therein (*f*). But it is not necessary that there should be an express request to publish; it is sufficient to prove that defendant sent his M.S. to the editor (*g*), or spoke the words complained of under such circumstances that he must have known and intended them to be published (*h*). He will be equally liable even though the editor has cut up his M.S. and merely published part of it (*i*), or has not inserted the exact words made use of by the defendant, provided that the sense and substance is the same (*k*). Difficulty is often met with in attempting to ascertain the author of the libel, for an editor will not as a rule give this information, nor is he bound to do so. To quote the words of Baron Martin in *Harle v. Catherall and others* (*l*), "When a man went to an editor to ask for the name of an anonymous correspondent, no blame attached to the editor for refusing to give the name. Indeed, an editor would almost be mad to do so. He should blame no editor for so refusing."

The plaintiff, therefore, generally has to satisfy himself with suing the proprietor of the paper, who usually procures an indemnity from the author.

NOTE 6.—All distributors of a newspaper are liable for the libels it contains, and it is no defence that in publishing the libel the defendant was merely acting as the servant or agent of another, "for the warrant of no man,

(*f*) *Per* Lord Erskine in *Burdett v. Abbot* (1811), 5 Dow, H. L. 201.

(*g*) *Bond v. Douglas* (1836), 7 C. & P. 626; *Reg. v. Lovett* (1838), 9 C. & P. 462.

(*h*) *Adams v. Kelly* (1824), Ry. & Moo. 557.

(*i*) *Tarpley v. Blabey* (1836), 2 Bing. N. C. 437; 7 C. & P. 395; 1 Hodges, 414; 2 Scott, 642.

(*k*) *Per* Montague Smith, J., in *Parke v. Prescott* (1869), L. R. 4 Ex. 179.

(*l*) (1866), 14 L. T. 802.

not even of the king himself, can excuse the doing of an illegal act" (*m*). Thus a printer's man whose sole duty it was to clap down the press has been held liable (*n*) ; so too has a compositor for setting up the type of a libel (*o*) ; but it will be a good defence for the defendant to prove that he "did not know that the paper contained . . . or was likely to contain a libel," and that he "ought not to have known it, having used reasonable care" (*p*). Thus, he is not liable if he prove that he cannot read (*q*), or that he carried the libel in a sealed letter (*r*) or parcel (*s*).

In accordance with the above principles, "if a man receives a letter with authority from the author to publish it, the person receiving it will not be justified, if it contains libellous matter, in inserting it in the newspaper. No authority from a third person will defend a man against an action brought by a person who has suffered from an unlawful act" (*t*). Neither is it any defence that the libel was copied from another newspaper, and was stated to be so (*u*).

(*m*) *Per cur.* in *Sands v. Child and others* (1693), 3 Lev. 352; *Maloney v. Bartley* (1812), 3 Camp. 210.

(*n*) *Rex v. Clerk* (1728), 1 Barn. 304.

(*o*) *Rex v. Knell* (1728), 1 Barn. 305.

(*p*) *Per* Lord Esher, M. R., in *Emmens v. Pottle and Son* (1885), 16 Q. B. D. p. 357 ; also *per* Bowen, L. J., at p. 358.

(*q*) *Per* Lord Kenyon, C. J., in *Rex v. Holt* (1792), 5 T. R. 144.

(*r*) *Per* Lord Kenyon, C. J., in *Rex v. Topham* (1791), 4 T. R. 219.

(*s*) *Day v. Bream* (1837), 2 M. & Rob. 55.

(*t*) *Per* Best, C. J., in *De Crespigny v. Wellesley* (1829), 5 Bing. 402.

(*u*) *Saunders v. Mills* (1829), 6 Bing. 213 ; 3 M. & P. 520 ; *Talbutt v. Clark* (1840), 2 M. & Rob. 312.

ARTICLE 9.—*Liability in cases of joint publication; no right to contribution or indemnity from co-defendant.*

Where there has been a joint publication of the libel by two or more persons, each of them is liable for all the ensuing damage, and has no claim to contribution or indemnity against the other or others, even though there has been an express promise to that effect.

NOTE 1.—This is merely a particular application of the well-known rule that there is no contribution between tort feorsors (*a*). The effect of it is, that the proprietor of a newspaper sued jointly with his negligent editor and the author of the libel cannot obtain compensation from either of them in respect of the damages which he has been obliged to pay to the plaintiff (*b*); nor will the fact that there has been an express promise to indemnify him if he will publish the libel, in any way improve his position, for such a promise is void, the consideration for it being illegal (*c*).

NOTE 2.—A printer cannot maintain an action for printing a libel (*d*), and if he agrees to print a book for a certain price and finds in the course of his work that the book contains libellous matter, he may refuse to proceed, and can sue for that part of the work which is not libellous in an action for work and labour performed, and materials provided, or, as it is called, on a *quantum meruit* (*e*).

(*a*) *Merryweather v. Nixan* (1799), 8 T. R. 186. See *infra*, Part I., Article 29, note.

(*b*) *Colburn v. Patmore* (1834), 1 C. M. & R. 73; 4 Tyr. 677.

(*c*) *Arnold v. Clifford* (Am.) (1835), 2 Sumner, 238.

(*d*) *Poplett v. Stockdale* (1825), Ry. & M. 337; *Bull v. Chapman* (1853), 8 Ex. 444.

(*e*) *Clay v. Yates* (1856), 25 L. J. Ex. 237; 27 L. T. O. S. 126; 1 H. & N. 73; 4 W. R. 557.

ARTICLE 10.—*Defences to action for libel.*

The defences to an action for libel are—

- (1.) Justification (Article 11);
- (2.) Fair comment (Article 13);
- (3.) Privilege (Article 14); which may be either—
  - (a) absolute (Articles 15, 16); or
  - (b) qualified (Articles 17—20);
- (4.) Apology (Article 21);
- (5.) Accord and satisfaction (Article 22);
- (6.) Release (Article 23);
- (7.) Previous action (Article 24);
- (8.) Statute of Limitations (Article 25).

NOTE.—It may be said that it is also a defence that the words complained of are not libellous (Article 1), or do not relate to the plaintiff (Article 2), or that there has been no publication (Article 3); but in all these cases the onus of proving the contrary is on the plaintiff, and if he does not do so, he fails to make out even a *prima facie* case.

ARTICLE 11.—*Justification.*

It is a good defence to an action of libel that the words complained of are true in substance and in fact.

NOTE 1.—The plea of justification is, however, as has been well said, a dangerous plea to put upon the record, for if the defendant cannot prove it, or withdraws it at the trial, it may, and most probably will, aggravate the damages (*f*).

(*f*) *Warwick v. Foulkes* (1844), 12 M. & W. 507; *Wilson v. Robinson* (1845), 14 L. J. Q. B. 196; 9 Jur. 726; 7 Q. B. 68; *Simpson v. Robinson* (1848), 18 L. J. Q. B. 73; 13 Jur. 187; 12 Q. B. 511; *Caulfield v. Whitworth* (1868), 18 L. T. 527; 16 W. R. 936.

Moreover, in order to succeed the defendant will have to prove that the *whole* libel is *substantially* true. Thus, where the libel complained of is an article or paragraph preceded by a title, it is not sufficient to prove the truth of the facts stated in the article or paragraph: the title itself must be justified, or the plaintiff will succeed. So that in *Bishop v. Latimer* (g), where a newspaper published a paragraph preceded by the title "How Lawyer B. treats his Clients," which contained a report of a case in which *one* client of Lawyer B. had been badly treated, it was held, although the case itself was accurately reported, that the title was not justified by the facts, and that the plaintiff was entitled to damages. In another case, *Clement v. Lewis and others* (h), where a newspaper had published a correct report of certain proceedings in the Insolvent Debtors Court preceded by the title "Shameful Conduct of an Attorney," the report was held privileged, but damages were recovered for the title (i).

If there is gross exaggeration the plea of justification will fail. Thus, in *Clarkson v. Lawson* (j), where the libel stated that the plaintiff, a proctor, had been three times suspended for extortion, it was held to be no justification to prove that he had been *once* so suspended. So where the defendant had stated that the plaintiff was a "libellous journalist," it was held that a plea of justification was not supported by proof that the plaintiff had libelled one person, who had obtained judgment against

(g) (1861), 4 L. T. 775.

(h) (1822), 3 Br. & Bing. 297; 7 Moore, 200; in the court below, *Lewis v. Clement* (1820), 3 B. & Ald. 702. See also *Mountney v. Watton* (1831), 2 B. & Ad. 673; *Chalmers v. Shackell* (1834), 6 C. & P. 475.

(i) See also p. 30, *infra*.

(j) (1829-30), 6 Bing. 266, 587; 3 M. & P. 605; 4 M. & P. 356. See also *Johns v. Gittings* (1590), Cro. Eliz. 239; *Goodburne v. Bowman and others* (1833), 9 Bing. 532; *Clarke v. Taylor* (1836), 2 Bing. N. C. 654; 2 Hodges, 65; 3 Scott, 95; *Blake v. Stevens* (1864), 11 L. T. 543; 4 F. & F. 232.

him for 100*l.* (*k*). And to call the editor of a newspaper “a felon editor,” is not justified by proof that the person libelled had been convicted of felony, and condemned to a year’s imprisonment; inasmuch as a person who has been convicted and suffered his term of imprisonment does not, in law, continue to be a felon (*l*).

Where the libel imputes the crime of bigamy to the plaintiff, and the plaintiff pleads justification, there must be “the same strictness of proof as on a trial for bigamy” (*m*). And if the libel complained of be that A. B. said that plaintiff did a disgraceful act, proof that A. B. did in fact say so is no defence, the whole libel must be justified, and it must be proved that plaintiff did, in fact, do the act alleged (*n*).

So if an account of a trial be published setting out counsel’s speech, and stating that the facts opened were proved, when actually the evidence only bore out part of the facts so stated, it is no defence to plead that the facts were so stated by counsel—the facts so stated must be proved true or the defendant will fail (*o*).

NOTE 2.—But, on the other hand, it is not necessary to justify every detail of the charge or general terms of abuse,

(*k*) *Wakley v. Cooke and Healey* (1849), 19 L. J. Ex. 91; 4 Ex. 511.

(*l*) *Leyman v. Latimer* (1877-8), 3 Ex. D. 15, 352; 47 L. J. Ex. 470; 37 L. T. 360, 819; 14 Cox, C. C. 51; 25 W. R. 751; 26 W. R. 305.

(*m*) *Per* Lord Denman, C. J., in *Willmet v. Harmer* (1839), 8 C. & P. at p. 697. See also *Smith v. Parker* (1844), 14 L. J. Ex. 52; 2 D. & L. 394; 13 M. & W. 459; *O’Brien v. Bryant* (1846), 16 L. J. Ex. 77; 4 D. & L. 341; 16 M. & W. 168.

(*n*) *De Crespigny v. Wellesley* (1829), 5 Bing. 392; 2 M. & P. 695; *M’Pherson v. Daniels* (1829), 10 B. & C. 263; 5 M. & R. 251; *Richards v. Richards* (1844), 2 M. & Rob. 557; *Watkin v. Hall* (1868), L. R. 3 Q. B. 396; 37 L. J. Q. B. 125; 18 L. T. 561; 16 W. R. 857.

(*o*) *Lewis v. Walter* (1821), 4 B. & Ald. 605. And see also cases cited on p. 21, *infra*.



provided that the gist of the libel is proved to be in substance correct, and that the details, &c. which are not justified, produce no different effect on the mind of the reader than the actual truth would do (*p*). Thus, where the libel complained of was that "L., B., and G. are a gang who live by card-sharping," it was held to be sufficient justification to prove that upon two distinct occasions L., B., and G. had cheated at cards (*q*).

So, where the plaintiffs were accused of being "impudent and ignorant scamps who had the audacity to pretend to cure all kinds of diseases with one kind of pill," and their business was referred to as "homicidal tricks," and "wholesale poisoning," and it was stated that several of them "had been convicted of manslaughter, and fined and imprisoned for killing people with enormous doses of their universal vegetable boluses," it was held that the libel was in substance correct upon proof "that the plaintiffs' pills when taken in large doses as recommended by the plaintiffs were highly dangerous, deadly, and poisonous," and "that two persons had died in consequence of taking large quantities of them and that the people who had administered these pills were tried, convicted, and imprisoned for the manslaughter of these two persons," and that it was not necessary to further justify the epithets "scamps," "rotgut rascals," "wholesale poisoning" (*r*).

(*p*) *Willmetts v. Harmer and another* (1837), 8 C. & P. 695.

(*q*) *Reg. v. Labouchere* (1880), 14 Cox, C. C. 419.

(*r*) *Morrison v. Harmer* (1837), 3 Bing. N. C. 759; 3 Hodges, 108; 4 Scott, 533. See also *Weaver v. Lloyd* (1824), 2 B. & C. 678; 1 C. & P. 295; 4 D. & R. 230; *Warman v. Hine* (1837), 1 Jur. 820; *Edsall v. Russell* (1842), 12 L. J. C. P. 4; 2 Dowl. N. S. 641; 6 Jur. 996; 4 M. & Gr. 1090; 5 Scott, N. R. 801; *Behrens v. Allen* (1862), 3 F. & F. 135; 8 Jur. N. S. 118.

ARTICLE 12.—*Distinction between report and comment.*

A report is an account, abbreviated or otherwise, of proceedings which have actually taken place. Comment on the other hand is the judgment or opinion of the writer on those proceedings.

NOTE.—The distinction between report and comment cannot be too strongly emphasized, and the necessity for keeping that distinction clearly in mind cannot be too strongly impressed upon all journalists and writers for the Press. “If any comments are made, they should not be made as part of the report. The report should be confined to what takes place in Court, and the two things, report and comment, should be kept separate” (s). And this is equally true, not only of a report of what takes place in Court, but also of all other proceedings, reports of which are *prima facie* privileged. A report, if it fall within Article 15 or 16, is absolutely privileged; whilst, if it fall within Articles 17, 18, 19, or 20, it comes under the head of qualified privilege, and even though libellous is protected in the absence of malice on the defendant’s part. Comment, on the other hand, if fair and *bona fide* on a matter of public interest is no libel. (See Article 13, *infra*.)

It should be noticed that although a report of judicial proceedings which comes within Article 16 is privileged, no comment is allowed until the proceedings terminate (t). Comment of every kind, even such as is temperate and judicious, and perfectly proper after the case is concluded, is a contempt of Court if published *before* (u).

(s) *Per* Lord Campbell, C. J., in *Andrews v. Chapman* (1853), 3 C. & K. at p. 288.

(t) *Lewis v. Levy* (1858), 27 L. J. Q. B. 282; E. B. & E. 537; 4 Jur. N. S. 970; *Daw v. Eley* (1868), L. R. 7 Eq. 49; 38 L. J. Ch. 113; 17 W. R. 245.

(u) *Roach v. Garvan, Re Read and Huggonson* (1742), 2 Atk. 469; 2 Dick. 794; *Rex v. Clement* (1821), 4 B. & Ald. 218; 11 Price, 69;

ARTICLE 13.—*Fair and bonâ fide comment on a matter of public interest.*

No action lies if the defendant can prove that the words complained of are a fair and *bonâ fide* comment on a matter of public interest.

The Court decides whether the matter commented on is one of public interest. The jury, if the Court is of opinion that there is some evidence that the comment is unfair, whether it is so in fact.

NOTE 1.—“It is incorrect to say, as some writers do, that *bonâ fide* comments on matters of public interest come under qualified privilege” (*v*). The defence in such a case really is, that the words are not defamatory—that fair and proper comment is no libel (*x*). If such comments were privileged, in order to succeed plaintiff would have to prove malice, however false and injurious the words complained of may have been, while defendant would only have to prove that at the time he made the charges

*Littler v. Thomson* (1839), 2 Beav. 129; *Reg. v. Dogherty* (1848), 5 Cox, C. C. 348; *Felkin v. Herbert* (1863-4), 33 L. J. Ch. 294; 9 L. T. 635; 10 Jur. N. S. 62; 12 W. R. 241, 332; *Reg. v. Gray* (1865), 10 Cox, C. C. 184; *Tichborne v. Mostyn* (1867), L. R. 7 Eq. 55, n.; 17 L. T. 5; 15 W. R. 1072; *In re The Cheltenham and Swansea Wagon Co.* (1869), L. R. 8 Eq. 580; 38 L. J. Ch. 330; 20 L. T. 169; 17 W. R. 463; *Tichborne v. Tichborne* (1870), 39 L. J. Ch. 398; 22 L. T. 55; *Vernon v. Vernon* (1870), 40 L. J. Ch. 118; 23 L. T. 696; 19 W. R. 404; *Bowden v. Russell* (1877), 46 L. J. Ch. 414; 36 L. T. 177; W. N. (1877), 55; *Robertson v. Labouchere* (1877), 42 J. P. 710; *Buenos Ayres Gas Co. v. Wilde* (1880), 42 L. T. 657; 29 W. R. 43; *Kitcat v. Sharp* (1882), 52 L. J. Ch. 134; 48 L. T. 64; W. N. (1882) 183; 31 W. R. 227.

(*v*) *Per Blackburn, J.*, in *Campbell v. Spottiswoode* (1863), 3 B. & S. 769. And see *per Lord Esher, M. R.*, and *Bowen, L. J.*, in *Merivale v. Carson* (1887), 20 Q. B. D. 275.

(*x*) *Per Blackburn, J.*, 32 L. J. Q. B. at p. 202.

he believed that they were true, and this is certainly not the law (*x*).

NOTE 2.—“FAIR AND BONA FIDE COMMENT.” All comment must be *fair*. Although the Court has frequently approved the finding of a jury as to the unfairness of a particular comment, it has never attempted to define fair comment, indeed, it would seem to have purposely abstained from doing so on the ground that the Press in such matters should be unfettered by any hard and fast rule, and that each case should be dealt with on its merits. “Nothing is more important than that fair and full latitude of discussion should be allowed to writers upon any public matter, whether it be the conduct of public men or the proceedings in courts of justice or in Parliament, or the publication of a scheme or a literary work. But it is always left to a jury to say whether the publication has gone beyond the limits of a fair comment on the subject-matter discussed. A writer is not allowed to overstep these limits” (*y*).

All comment must be *bonâ fide*. Criticism must not be made a cloak for malice. There should be no insinuation of base and wicked motives or of improper and dishonourable conduct without some foundation in fact; and it is no defence that defendant honestly believed the charges to be true (*z*).

The matter commented on must be actual fact. “The

(*x*) See Odgers on Libel and Slander, 2nd ed. p. 33.

(*y*) *Per* Crompton, J., in *Campbell v. Spottiswoode* (1863), 3 B. & S. at p. 778.

(*z*) *Cooper v. Lawson* (1838), 8 A. & E. 746; 2 Jur. 919; 1 P. & D. 15; 1 W. W. & H. 601; *Parmiter v. Coupland and another* (1840), 9 L. J. Ex. 202; 4 Jur. 701; 6 M. & W. 105; *per* Cockburn, C. J., in *Campbell v. Spottiswoode* (1863), 32 L. J. Q. B. 185; 8 L. T. 201; 3 B. & S. 769; 3 F. & F. 421; 9 Jur. N. S. 1069; 11 W. R. 569; *Harle v. Catherall and others* (1866), 14 L. T. 801; *Bryce v. Rusden* (1886), 2 Times L. R. 435; *Brenon v. Ridgway* (1887), 3 Times L. R. 592.

very statement," indeed of the rule set out in Article 13, *supra*, "assumes the matters of fact commented upon to be somehow or other ascertained. It does not mean that a man may invent facts, and comment on the facts so invented in what would be a fair and *bond fide* manner on the supposition that the facts were true. . . . If the facts as a comment upon which the publication is sought to be excused do not exist, the foundation of the plea fails" (a). A newspaper may not set out evidence which might have been, but was not in fact given, and suggest as an inference therefrom that the prisoner though acquitted was really guilty (b). It may comment on evidence actually given (c), but may not charge a witness with having committed perjury (d). The defendant will not, however, be liable for trivial mistakes made accidentally, for "it is not to be expected that a public journalist will always be infallible" (e).

NOTE 3.—"MATTER OF PUBLIC INTEREST." Under this description come:—

(1) ALL STATE MATTERS; EVERYTHING WHICH CON-

(a) *Per cur.* in *Lefroy v. Burnside* (1879), 4 L. R. Ir. at p. 565. See also *per cur.* in *Davis and Sons v. Shepstone* (1886), 11 App. Cas. at p. 190.

(b) *Rex v. White and another* (1808), 1 Camp. 359, n.; *Lewis v. Walter* (1821), 4 B. & Ald. 605; *Helsham v. Blackwood and another* (1851), 20 L. J. C. P. 187; 11 C. B. 111; 15 Jur. 861; *Hibbins v. Lee* (1864), 11 L. T. 541; 4 F. & F. 243; *Woodgate v. Ridout* (1865), 4 F. & F. 202; *Risk Allah Bey v. Whitehurst and others* (1868), 18 L. T. N. S. 615; *Dickeson v. Hilliard and another* (1874), L. R. 9 Ex. 79; 43 L. J. Ex. 37; 30 L. T. 196; 22 W. R. 372.

(c) *Hedley v. Barlow* (1865), 4 F. & F. 224.

(d) *Roberts v. Brown* (1834), 10 Bing. 519; 6 C. & P. 757; 4 M. & Scott, 407; *Littler v. Thomson* (1839), 2 Beav. 129; *Felkin v. Herbert* (1863-64), 33 L. J. Ch. 294; 9 L. T. 635; 10 Jur. N. S. 62; 12 W. R. 241, 332.

(e) *Per Cockburn, C. J.*, in *Woodgate v. Ridout* (1865), 4 F. & F. 217. See also cases on p. 16, *supra*.

CERNS GOVERNMENT, EITHER HOUSE OF PARLIAMENT, OR ANY COMMITTEE THEREOF.—Evidence given before a parliamentary committee (*f*), or a royal commission (*g*); the prevalence of corrupt practices at a parliamentary election (*h*); government appointments (*i*); a petition to parliament (*k*), and a debate in the House thereon (*l*); a report by the Board of Admiralty (*m*).

(2) THE PUBLIC CONDUCT OF EVERY ONE WHO TAKES PART IN PUBLIC AFFAIRS (*n*).—Of statesmen and politicians (*o*); public agitators (*p*); clergymen (*q*); judges and magistrates (*r*); barristers (*s*); candidates for parliament (*t*), and their supporters in public (*u*); vestrymen and way-

(*f*) *Hedley v. Barlow* (1865), 4 F. & F. 224.

(*g*) *Mulkern v. Ward* (1872), L. R. 13 Eq. 622; 41 L. J. Ch. 464; 26 L. T. 831.

(*h*) *Wilson v. Reed and others* (1860), 2 F. & F. 149.

(*i*) *Turnbull v. Bird* (1861), 2 F. & F. 508; *Seymour v. Butterworth* (1862), 3 F. & F. 372.

(*k*) *Dunne v. Anderson* (1825), 3 Bing. 88; 1 Moore, 407; R. & M. 287; *Wason v. Walter* (1870), L. R. 4 Q. B. 73; 38 L. J. Q. B. 34.

(*l*) *Wason v. Walter*, *supra*.

(*m*) *Henwood v. Harrison* (1872), L. R. 7 C. P. 606; 41 L. J. C. P. 206; 26 L. T. 938; 20 W. R. 1000. See the observations of Bowen, L. J., on this case in 20 Q. B. D. 282—283.

(*n*) *Per* Bramwell, B., in *Kelly v. Sherlock* (1866), L. R. 1 Q. B. at p. 689; 35 L. J. Q. B. 209; 12 Jur. N. S. 937.

(*o*) *Parmiter v. Coupland and another* (1840), 9 L. J. Ex. 202; 6 M. & W. 105; 4 Jur. 701.

(*p*) *Odger v. Mortimer* (1873), 28 L. T. 472.

(*q*) *Kelly v. Tinling* (1865), L. R. 1 Q. B. 699; 35 L. J. Q. B. 940.

(*r*) *Hibbins v. Lee* (1864), 11 L. T. 541; 4 F. & F. 243.

(*s*) *Seymour v. Butterworth* (1862), 3 F. & F. 372.

(*t*) *Duncombe v. Daniell* (1836), 8 C. & P. 222; 2 Jur. 32; 1 W. W. & H. 101.

(*u*) *Davis v. Duncan* (1874), L. R. 9 C. P. 396; 43 L. J. C. P. 143; 30 L. T. 464; 38 J. P. 728; 22 W. R. 575.

wardens (*x*); petitioners to parliament (*y*); BUT NOT THE PRIVATE CONDUCT OF SUCH PERSONS SAVE IN SO FAR AS IT AFFECTS THEIR PUBLIC RELATIONS (*z*).

(3) LEGAL (*a*) AND ECCLESIASTICAL MATTERS.—The mode of conducting church services (*b*); but not the affairs of a private society established by the incumbent (*c*).

(4) THE ADMINISTRATION OF PUBLIC INSTITUTIONS AND LOCAL AFFAIRS.—The official acts of a waywarden (*d*); “the management of the poor and the administration of the poor law” (*e*); the report of an inspector of charities under the Charitable Trusts Acts (*f*); but not the acts of the trustee of a private corporation (*g*).

(5) PLACES OF PUBLIC AMUSEMENT OR ENTERTAINMENT.—A dramatic ball (*h*), and a flower show (*i*).

(6) LITERATURE.—The contents of any newspaper (*k*), or

(*x*) *Harle v. Catherall* (1866), 14 L. T. 801.

(*y*) *Wason v. Walter*, *supra*.

(*z*) *Wilson v. Reed*, *Seymour v. Butterworth*, *supra*; *Harwood v. Sir J. Astley* (1804), 1 B. & P. N. R. 47; *Wisdom v. Brown* (1885), 1 Times L. R. 412; *Pankhurst v. Hamilton* (1887), 3 Times L. R. 500.

(*a*) *Per Cockburn*, C. J., in *Cox v. Feeney* (1863), 4 F. & F. 13; and in *Pursell v. Sowler* (1877), 2 C. P. D. 218 (C. A.).

(*b*) *Kelly v. Tinling* (1865), L. R. 1 Q. B. 699; 35 L. J. Q. B. 231; 13 L. T. 255; 29 J. P. 725; 30 J. P. 791, 805; 12 Jur. N. S. 940; 14 W. R. 51.

(*c*) *Gathercole v. Miall* (1846), 15 L. J. Ex. 179; 10 J. P. 582; 10 Jur. 337; 15 M. & W. 319; *Walker v. Brogden* (1865), 12 L. T. 495; 19 C. B. N. S. 65; 11 Jur. N. S. 671; 13 W. R. 809; *Booth and others v. Briscoe* (1877), 2 Q. B. D. 496 (C. A.); 25 W. R. 838.

(*d*) *Harle v. Catherall and others* (1866), 14 L. T. 801.

(*e*) *Per Cockburn*, C. J., in *Pursell v. Sowler* (1877), 2 C. P. D. 215 (C. A.); 46 L. J. C. P. 308; 36 L. T. 416; 41 J. P. 789; 25 W. R. 362.

(*f*) *Cox v. Feeney* (1863), 4 F. & F. 13.

(*g*) *Wilson v. Fitch* (1871), (Am.) 41 Cal. 363.

(*h*) *Dibdin v. Swan and Bostock* (1793), 1 Esp. 28.

(*i*) *Green v. Chapman* (1837), 4 Bing. N. C. 92; 5 Scott, 340.

(*k*) *Heriot v. Stuart* (1796), 1 Esp. 437; *Stuart v. Lovell* (1817), 2 Stark. 93; *Campbell v. Spottiswoods*, *supra*.

book (*l*), or its author as such (*m*); but not the private character of an author (*n*), or journalist (*o*).

(7) ART.—Painting (*p*), and architecture (*q*).

(8) ANYTHING WHICH INVITES PUBLIC ATTENTION OR CRITICISM (*r*).—The contents of a pamphlet (*s*), advertisement (*t*), or handbill issued to the public (*u*); or a stage-play (*v*).

#### ARTICLE 14.—*Privilege.*

In certain cases, even though the matter complained of is libellous, in the interests of public policy, no liability attaches to the publication thereof—in other words, the communication is privileged.

(*l*) *Macleod v. Wakeley* (1828), 3 C. & P. 311; *Strauss v. Francis* (1866), 15 L. T. 674; 4 F. & F. 939, 1107.

(*m*) *Carr v. Hood* (1808), 1 Camp. 355, n.

(*n*) *Fraser v. Berkeley* (1836), 7 C. & P. 621.

(*o*) *Strauss v. Francis*, *Heriot v. Stuart*, *Stuart v. Lovell*, *Campbell v. Spottiswoode*, *supra*; *Russell and another v. Webster* (1874), 23 W. R. 59.

(*p*) *Thompson v. Shackell* (1828), 1 M. & M. 187; *Whistler v. Ruskin*, Times, Nov. 26th and 27th, 1878.

(*q*) *Soane v. Knight* (1827), Moo. & Mal. 74.

(*r*) *Morrison v. Belcher* (1863), 3 F. & F. 614; *Duplany v. Davis* (1887), 3 Times L. R. 184.

(*s*) *Hibbs v. Wilkinson* (1859), 1 F. & F. 608; *Koenig v. Ritchie* (1862), 3 F. & F. 413; *Odger v. Mortimer* (1871), 28 L. T. 472.

(*t*) *Morrison and another v. Harmer and another* (1837), 3 Bing. N. C. 759; 3 Hodges, 108; 4 Scott, 524; *Hunter v. Sharpe* (1866), 15 L. T. 421; 4 F. & F. 983; 30 J. P. 149.

(*u*) *Eastwood v. Holmes* (1858), 1 F. & F. 347; *Paris v. Levy* (1860), 30 L. J. C. P. 11; 3 L. T. 324; 9 O. B. N. S. 342; 2 F. & F. 71; 7 Jur. N. S. 289; 9 W. R. 71; *Jenner and another v. A'Beckett* (1871), L. R. 7 Q. B. 11; 41 L. J. Q. B. 14; 25 L. T. 464; 36 J. P. 38; 20 W. R. 181.

(*v*) *Merivale v. Carson* (1887), 20 Q. B. D. 275 (C. A.).



On privileged occasions there is either—

(1.) Absolute privilege, where no action lies, however untrue or malicious (*x*) the statement may have been. This exists in the following cases (*y*):

- (a) Reports, &c., published by order of parliament (Article 15);
- (b) Reports in a newspaper (*z*) of proceedings in a Court of justice if published contemporaneously with such proceedings (Article 16, Note 1);

(2.) Qualified privilege, where the *prima facie* protection is rebutted by proof of actual malice (*x*). This exists in the following cases (*y*):—

- (a) Reports of proceedings in parliament (Article 17);
- (b) Reports in certain journals of proceedings in a Court of justice, and reports in a newspaper (*z*) of such proceedings if not published contemporaneously with such proceedings (Article 16, Notes 1 and 3);
- (c) Reports of proceedings of public meetings (Article 18);
- (d) Reports of vestry meetings, &c. (Article 19);
- (e) Notices and reports published at request of government office or authorities (Article 20).

(*x*) The terms “malicious” and “malice” are here and throughout used in the ordinary sense of personal spite or ill-feeling.

(*y*) This list only purports to deal with privilege so far as the law of libel in its relation to the press is concerned.

(*z*) As to the meaning of “newspaper,” see *infra*, p. 28.

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ARTICLE 15.—*Reports, &c. published by order of parliament.*

All reports, papers, votes, and proceedings published by order of either House of Parliament, and every verified copy thereof, are absolutely privileged, and all proceedings at law, civil or criminal, will be immediately stayed on production of a certificate that such reports, &c. were published by order of either House (*y*).

NOTE 1.—It will be remembered that this statutory provision terminated the long struggle between the House of Commons and the Courts of justice, the latter having held, in the famous case of *Stockdale v. Hansard* (*z*), that at common law no privilege attached to the publication of parliamentary reports and papers, even if such publication were by order of the whole House.

NOTE 2.—The publication of extracts from or abstracts of such reports, &c. is privileged, if, in the opinion of the jury, such publication was *bonâ fide* and without malice (*a*).

ARTICLE 16.—*Reports of proceedings in a Court of Justice.*

A report in any newspaper (*b*) of proceedings publicly heard before any Court exercising judicial authority is privileged, provided that it is—

- (1.) Fair and accurate (*c*);
- (2.) Published contemporaneously with such proceedings (*d*);

(*y*) 3 & 4 Vict. c. 9, ss. 1, 2, pp. 80—82, *infra*.

(*z*) (1839), 9 A. & E. 1, 243; 7 C. & P. 731; 8 Dowl. 148, 522; 3 Jur. 905; 2 M. & Rob. 9; 2 P. & D. 1.

(*a*) 3 & 4 Vict. c. 9, s. 3, p. 83, *infra*.

(*b*) As to the meaning of "newspaper," see p. 28, *infra*.

(*c*) Note 2.

(*d*) Note 3.

- (3.) Not prohibited by order of the Court (*e*);  
 (4.) Not blasphemous (*f*), seditious or indecent (*g*).

NOTE 1.—Having regard to sect. 3 of the Law of Libel Amendment Act, 1888 (*h*), it is submitted that the above is an accurate statement of the law as it now stands, so that the case of *Stevens v. Sampson* (*i*) is no longer law, except as to reports of judicial proceedings in a newspaper as defined by the Act, not published contemporaneously with such proceedings, and reports appearing in journals which do not come within the meaning of “newspaper” as so defined; and it would seem that a report coming within the above article, and satisfying the provisos contained therein, is absolutely privileged, so that no matter how malicious may have been the publication of it, no action will lie, for although sect. 3 does not state in express terms that the report shall be *absolutely* privileged, there are no words, as in sect. 4, to the effect that the report shall be privileged, “*unless it shall be proved that such report . . . was published . . . maliciously.*” Moreover, if this interpretation be incorrect, sect. 3 is merely declaratory of the law as it existed before the passing of the Act. If such reports be, in fact, absolutely privileged, a remarkable example is afforded of the failure of the legislature to accomplish its intentions, for it is quite clear from the debates in parliament (*j*)

(*e*) *Rex v. Clement* (1821), 4 B. & Ald. 218; 11 Price, 69.

(*f*) *Per Bayley, J.*, in *Rex v. Creevey* (1813), 1 M. & S. 273; *Rex v. Mary Carlile* (1819), 3 B. & Ald. 167.

(*g*) *Steele v. Brannan* (1872), L. R. 7 C. P. 261; 41 L. J. M. C. 85; 26 L. T. 509; 20 W. R. 607. 51 & 52 Vict. c. 64, s. 3.

(*h*) Set out on p. 103, *infra*.

(*i*) (1879), 5 Ex. D. 53; 49 L. J. Q. B. 120; 41 L. T. 782; 44 J. P. 217; 28 W. R. 87.

(*j*) Sect. 3 of the Bill as originally submitted to Parliament provided that “a fair and accurate report published in any newspaper of proceedings of, and in, any Court exercising judicial authority, shall be absolutely privileged.” In Committee on June 6th, 1888,

(evidence of which would not, of course, be admitted to show what those intentions were) that the legislature did not intend that such reports should be privileged if published maliciously.

“NEWSPAPER.”—By sect. 1 of the Law of Libel Amendment Act, 1888, the meaning of the word newspaper for the purposes of such Act is defined to be the same as in the Newspaper, Libel, and Registration Act, 1881, *i.e.*, “any paper containing public news, intelligence or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts or numbers; also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only, or principally, advertisements.” Therefore the Act has no application to magazines, or to monthly trade papers, or to any paper or pamphlet, though printed for sale and containing public news, and published periodically, if such publication be at intervals exceeding twenty-six days (*k*). If any of these contain a report of judicial proceedings, such report is in no way affected by the Act of 1888—the law still being that it is privileged, provided that it is—(1.) fair and accurate;

(2.) not prohibited by order of the Court;

(3.) not blasphemous, seditious, or obscene,

but,—and this is the point to notice,—all privilege which the defendant may have will be effectually rebutted by proving that he published the libel maliciously (*l*). Where

Sir Algernon Borthwick moved and carried an amendment to the effect that the word “absolutely” should be omitted, in order, as was then expressly stated, to render such reports unprivileged if it were proved that they had been published maliciously.

(*k*) *Att.-Gen. v. Bradbury and Evans* (1851), 21 L. J. Ex. 12; 7 Ex. 97; 16 Jur. 130.

(*l*) *Salmon v. Isaac* (1869), 20 L. T. 885.

the defendant has published the report complained of in the ordinary course of his business as proprietor, editor, or reporter of the newspaper, it will be very difficult, if not impossible, to prove malice; but where the defendant was a party to the action reported (*m*), or the solicitor for one of the parties (*n*), it will be more easy to satisfy a jury that he published the report maliciously.

NOTE 2.—“FAIR AND ACCURATE.” It is not necessary that the report should be verbatim, but it must be “substantially a fair account of what took place” in Court (*o*). Thus, “it is sufficient to publish a fair abstract” (*p*). A report is not fair and accurate which contains an epitome of the speeches of counsel but omits all reference to the evidence (*q*), or only refers to it by stating that the witnesses “proved all that had been stated by the counsel for the prosecution” (*r*), or which states that certain facts appeared from the evidence, when in reality no evidence had been given of such facts (*s*), or which states “from inquiries made by our reporter, &c., &c.,” when in

(*m*) As in *Waterfield v. Bishop of Chichester* (1676), 2 Mod. 118; *Myers v. Defries*, Times, 23rd July, 1877; *Saxby v. Easterbrook* (1878), 3 C. P. D. 339; 27 W. R. 188; *Dodson v. Owen* (1885), 2 Times L. R. 111.

(*n*) As in *Stevens v. Sampson* (1879), 5 Ex. D. 53 (C. A.); 49 L. J. Ex. 120.

(*o*) Per Lord Campbell, C. J., in *Andrews v. Chapman* (1853), 3 C. & K. 289.

(*p*) Per Mellish, L. J., in *Milissich v. Lloyds* (1877), 46 L. J. C. P. 405; per Byles, J., in *Turner v. Sullivan and others* (1862), 6 L. T. 130.

(*q*) *Flint v. Pike* (1825), 4 B. & C. 473; 6 D. & R. 528; *Saunders v. Mills* (1829), 6 Bing. 213; 3 M. & P. 520; *Woodgate v. Ridout* (1865), 4 F. & F. 202.

(*r*) *Lewis v. Walter* (1821), 4 B. & Ald. 605; *Roberts v. Brown* (1834), 10 Bing. 519; 6 C. & P. 757; 4 M. & Scott, 407.

(*s*) *Pinero v. Goodlake* (1866), 15 L. T. 676; *Ashmore v. Borthwick* (1885), 49 J. P. 792; 2 Times L. R. 113, 209.

fact the reporter had not made inquiries but had merely copied certain affidavits (*t*). A report which only consists of part of the judgment, material parts of which are omitted, is of course not privileged (*u*).

If possible, the summing-up of the learned judge should always be given (*x*), although this will not necessarily render the report fair and accurate (*y*). The report must be strictly confined to what actually took place in Court. The reporter must not add any comments of his own, if he does, no privilege will attach thereto (*z*). The report of a trial should never be preceded by a title which exaggerates the real facts of the case. If it is, even though the report itself is fair and accurate, damages may be recovered for the libellous title. Thus, damages have been recovered for heading the report of a case "Judicial delinquency" (*a*), "Shameful conduct of an attorney" (*b*), "An honest lawyer" (*c*), "Wilful and corrupt perjury" (*d*); the facts in each case not justifying such a description (*e*).

(*t*) *Reg. v. Andrew Gray* (1861), 26 J. P. 663.

(*u*) *Hayward & Co. v. Hayward & Sons* (1886), 34 Ch. D. 198; 56 L. J. Ch. 287; 55 L. T. 729; 82 Law Times (Newspaper), 61; 3 Times L. R. 102; 35 W. R. 392; *Grimwade v. Dicks* (1886), 2 Times L. R. 627.

(*x*) *Milassich v. Lloyds* (1877), 46 L. J. C. P. 404; 36 L. T. 423; 13 Cox, C. C. 575.

(*y*) *MacDougall v. Knight* (1889), 14 App. Cas. 194.

(*z*) *Rex v. Lee* (1804), 5 Esp. 123; *Rex v. Fisher and others* (1811), 2 Camp. 563; *Rex v. Fleet* (1818), 1 B. & Ald. 379; *Cooper v. Lawson* (1838), 8 A. & E. 746; 2 Jur. 919; 1 P. & D. 15; 1 W. W. & H. 601.

(*a*) *Stiles v. Nokes* (1806), 7 East, 493.

(*b*) *Clement v. Lewis and others* (1820), 3 Br. & Bing. 297; 7 Moore, 200; in the Court below, *Lewis v. Clement* (1820), 3 B. & Ald. 702; *Bishop v. Latimer* (1861), 4 L. T. 775.

(*c*) *Boydell v. Jones* (1838), 7 Dowl. 210; 1 Horn & H. 408; 4 M. & W. 446.

(*d*) *Lewis v. Levy* (1858), 27 L. J. Q. B. 282; E. B. & E. 537; 4 Jur. N. S. 970.

(*e*) See also p. 15, *supra*.

NOTE 3.—“IF PUBLISHED CONTEMPORANEOUSLY WITH SUCH PROCEEDINGS.” If as above submitted sect. 3 of the Act of 1888, extends the privilege hitherto possessed by reports of judicial proceedings published in a newspaper, it is, on the other hand at least, open to question whether by the insertion of these words it does not restrict it. Prior to the passing of this Act every fair and accurate report of judicial proceedings, whether published by a newspaper or not (*f*), and whether published contemporaneously with such proceedings or not was *prima facie* privileged and in order to succeed the plaintiff would have to prove that the defendant had published the report maliciously. The fact that the report was not published until some time after the proceedings had taken place would be evidence of malice, but that was all, it would not *ipso facto* render the report unprivileged, the jury would have to find malice. Though the matter is not wholly free from doubt, it is submitted that at the present time the law is still the same, except in the case of reports which come within sect. 3 of the Law of Libel Amendment Act, 1888. It has been suggested, erroneously in the present writer's opinion, that the effect of this section is to deprive of all privilege every report in a newspaper of proceedings publicly heard before any Court exercising judicial authority, *if it is not published contemporaneously with such proceedings*, even though fair and accurate, and published *bona fide* and without malice. It is, however, submitted that if the Court is of opinion that the report is *not* published contemporaneously with the proceedings, the section does not apply, and the privilege is then the qualified privilege, given by the common law, which will be rebutted on proof of malice.

To sum up then, a report of judicial proceedings published in a newspaper or journal, will fall into one of the following classes :

(*f*) *Per* Brett, L. J., in *Milissich v. Lloyds* (1877), 46 L. J. C. P. 404; 36 L. T. 423; 13 Cox, C. C. 575.

- (1.) Reports in a newspaper as defined by sect. 1 of the Law of Libel Amendment Act, 1888 (*f*), published contemporaneously with such proceedings. These are absolutely privileged by sect. 3 of the Act.
- (2.) Reports in a newspaper as so defined not published contemporaneously with such proceedings. These obtain a qualified privilege by the common law, but the fact of their not being published contemporaneously, would be such strong evidence of malice as to render the privilege practically non-existent.
- (3.) Reports not in a newspaper so defined. These also obtain a qualified privilege by the common law which may be rebutted by proof that they were published maliciously by the defendant.

What then is the precise meaning of the words "IF PUBLISHED CONTEMPORANEOUSLY WITH SUCH PROCEEDINGS"? Strictly speaking, a report published in a morning paper of a trial which has taken place on the previous day is not "published contemporaneously with such proceedings," nor even the report in an evening paper on the same day. It cannot, however, be seriously contended that such reports are not now as they have been for more than a century privileged if "substantially correct." The difficulty of course arises when we consider what length of time must elapse between the trial and the publication of the report in order to bring the latter within the description "not published contemporaneously with such proceedings." And it is evident that the time in question must vary according to the opportunity, and time of publication of the paper. Thus, a report published in a daily paper a fortnight after the proceedings had taken place, would be in a very different category to the same report published at the same time by a paper which only appeared once in every fortnight, and which had had no previous opportunity of publishing it. The practical importance of the section is however small, for a newspaper

(*f*) For definition, see *supra*, p. 28.



which published a stale report of a case would have great difficulty in satisfying a jury that it was not done maliciously, and if it failed it would be precisely in the same position as if the report were in the first instance held unprivileged.

Under this description of reports of judicial proceedings come reports of proceedings before a judge at chambers (*g*), in gaol before a registrar in bankruptcy (*h*), before a County Court Judge in his own room to which the public have access (*i*), before examiners duly appointed to inquire into the sufficiency of sureties offered on trial of an election petition (*k*); also, it is submitted, having regard to the case of *Usill v. Hales* (*l*), all reports of *ex parte* proceedings, whether such proceedings result in the discharge by the magistrate of the party charged (as in *Curry v. Walter* (*m*) and *Lewis v. Levy* (*n*)) or not.

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ARTICLE 17.—*Reports of proceedings in parliament.*

A report of proceedings in either house of parliament is privileged, provided that it is fair and accurate; but such privilege will be rebutted, if plaintiff prove that defendant published such report maliciously (*o*).

NOTE.—As to the meaning of “fair and accurate,” see

(*g*) *Smith v. Scott* (1847), 2 O. & K. 580.

(*h*) *Ryalls v. Leader and others* (1865), L. R. 1 Ex. 296; 35 L. J. Ex. 185; 14 L. T. 563; 4 H. & C. 555; 30 J. P. 520; 12 Jur. N. S. 503; 14 W. R. 838.

(*i*) *Myers v. Defries*, Times, 23rd July, 1887.

(*k*) *Cooper v. Lawson* (1838), 8 A. & E. 746; 1 P. & D. 15; 1 W. W. & H. 601.

(*l*) (1878), 3 O. P. D. 179; 47 L. J. O. P. 323; 38 L. T. 65; 41 J. P. 743; 26 W. R. 371.

(*m*) (1796), 1 B. & P. 525; 1 Esp. 456.

(*n*) (1858), 27 L. J. Q. B. 282; E. B. & E. 537; 4 Jur. N. S. 970.

(*o*) *Wason v. Walter* (1870), L. R. 4 Q. B. 73; 38 L. J. Q. B. 34; and see 3 & 4 Vict. c. 9, s. 3, p. 82, *infra*.

Article 16, Note 2, p. 29, *supra*. The above rule was for a long time doubtful, but it is now clearly and satisfactorily settled by *Wason v. Walter* (o), in which case the plaintiff sued the proprietor of the "Times" for publishing a report of a debate in the House of Lords commenting severely on plaintiff's conduct in procuring the presentation of a petition to the House of Lords charging a high judicial officer with misconduct: held that the report was privileged.

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ARTICLE 18.—*Reports of proceedings of public meetings.*

A report published in any newspaper of the proceedings of a meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted, is privileged, provided that—(1) the report is fair and accurate; (2) the matter complained of is not blasphemous or indecent; and (3) the matter complained of is of public concern, or the publication thereof is for the public benefit. This privilege may be rebutted by proof (1) that the report was published maliciously; or (2) that the defendant has after request refused or neglected to insert in his newspaper a reasonable letter or statement by way of contradiction or explanation of such report (p).

NOTE 1.—The law contained in this article was introduced by the Act of 1888 (p).

As to the meaning of the term "newspaper," see p. 28, *supra*; and of the words "fair and accurate," p. 29, *supra*.

(o) (1870), L. B. 4 Q. B. 73; 38 L. J. Q. B. 34.

(p) 51 & 52 Vict. c. 64, s. 4, pp. 103—104, *infra*.

In order to establish privilege for the publication of proceedings at a public meeting, the defendant will have to prove (a) that the report is fair and accurate; (b) that the meeting was *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern; (c) that the matter complained of is of public concern, *or* that the publication of the matter complained of is for the public benefit.

There has been a great deal of discussion as to whether it will be necessary, in order to establish privilege for the publication in a newspaper of any of the proceedings specified in sect. 4 of the Act of 1888, to prove (1) that the matter is of public concern, *and* (2) that the publication thereof is for the public benefit; or whether it will be sufficient to prove either (1) or (2). At first sight the former construction appears to be the correct one, but it is submitted that a careful consideration of the words of the section (*p*) will prove that this is not so. In support of the latter contention, an opinion of counsel has already been made public to the effect that "it is impossible to give a very confident opinion as to the construction which will finally be put upon the clause; but on the whole it will probably be held that a fair and accurate report in a newspaper of the proceedings of any of the meetings specified is protected, where either the matter is of public concern or the publication of which is for the public benefit. For the privilege is only taken away where the matter is *not* of public concern, and the publication of it is *not* for the public benefit; and if so, it follows that where either it is of public concern *or* for the public benefit the privilege exists" (*q*).

This opinion is confirmed by a consideration of the clause in the same section which deals with blasphemous or indecent matter. That clause contains two provisoes—a proviso that no blasphemous matter shall be protected, and a

(*p*) Set out at pp. 103—104, *supra*.

(*q*) Times, January 11th, 1889.

proviso that no indecent matter shall be protected—consequently the privilege will be taken away if it be proved that the matter is blasphemous, *or* if it be proved that the matter is indecent. On the other hand, the clause dealing with the question under discussion is really only one proviso consisting of two terms, both of which must co-exist in order that the proviso may apply and the privilege be taken away; and should only one of them exist, the proviso fails to apply and the privilege remains. In other words, the Act does not give any new protection where two blemishes occur; the first being that the matter is not of public concern, the second that the publication of it is not for the public benefit.

The effect of the two clauses may be presented in the following tabular form:

I. "Provided that there shall be no privilege where—

(a) the matter is blasphemous, *or*

(b) the matter is indecent."

Therefore if either condition (a) or (b) is satisfied there is no privilege.

II. "Provided that there shall be no privilege where—

( $\alpha$ ) the matter is not of public concern, *and*

( $\beta$ ) the publication of it is not for the public benefit."

Therefore if condition ( $\alpha$ ) or ( $\beta$ ) is satisfied there is privilege (*q*).

(*q*) In considering this question, it is most important to remember that the Legislature have framed the proviso under discussion from the negative point of view; and it is submitted with great respect that this fact has not been duly appreciated by the learned writer of the following paragraph in the *Law Journal* for January 19th, 1889:—"The secretary of the Libel Law Reform Committee writes to correct what he calls a mistaken impression that under the Law of Libel Amendment Act, 1888, it will be necessary to establish privilege for the publication in a newspaper of proceedings at public meetings to prove that the publication is for the public benefit. In the minds of lawyers this impression cannot be corrected by what the writer calls abstract reasoning or making public sanguine

NOTE 2.—“A MEETING *bonâ fide* AND LAWFULLY HELD FOR A LAWFUL PURPOSE, AND FOR THE FURTHERANCE OR DISCUSSION OF ANY MATTER OF PUBLIC CONCERN WHETHER THE ADMISSION THERETO BE GENERAL OR RESTRICTED.” The last words of this clause would apparently cover reports of meetings not in the widest sense public, *e.g.*, of meetings to which admission can only be obtained by ticket, provided, of course, that the object of the meeting is lawful and for the furtherance or discussion of any matter of public concern. Probably, also, reports of meetings held at a private house of the same nature at which persons were only present by invitation would be included. The meeting must be “*bonâ fide* . . . held,” *i.e.*, it must not be held for the mere purpose of defamation—consequently, the report of any meeting, if the jury were satisfied that it had been held for such purpose would not

opinions of counsel, but only on a comparison of the words of the repealed section with the words of the section replacing them. The repealed section (44 & 45 Vict. c. 60, s. 2) enacted that ‘any report published in any newspaper of the proceedings of a public meeting shall be privileged if . . . the publication of the matter complained of was for the public benefit.’ The replacing section enacts that ‘a . . . report published in any newspaper of the proceedings of a public meeting . . . shall be privileged, . . . provided that nothing in this section contained shall be deemed or construed . . . to protect the publication of any matter . . . the publication of which is not for the public benefit.’ The existing enactment says the same thing as the repealed enactment, only in more words, and it adds to the previous condition requiring the publication to be for the public benefit the further condition that it be of public concern, coupling the two together in the proviso with an ‘and,’ which no ingenuity can make ‘or.’ The words left out in the two passages do not affect the reading of them so far as the point in question is concerned.” It will be noticed that so far from its being an assistance towards what is submitted as the true construction of the section to construe the word “and” as “or” (as is suggested above) it is exactly the reverse. If the word “or” replaced the word “and,” the meaning of the section would, it is submitted, then be precisely what the learned writer of the above paragraph contends it is.

be protected. Moreover, the meeting must be "*lawfully held*," i.e., it must not be held in violation of the law, *e.g.*, in contravention of the statute against tumultuously petitioning Parliament (*q*); and "*for a lawful purpose*," thus it must not be illegal (*r*), or seditious (*s*), or held under such circumstances as will probably cause a breach of the peace (*t*).

NOTE 3.—"The matter complained of must be of public concern." This means that the matter complained of must be of *public*, in contradistinction to *private* concern.

NOTE 4.—"THE PUBLICATION THEREOF IS FOR THE PUBLIC BENEFIT;" in other words, it is not enough that the report is fair and accurate, and that it is for the public benefit that reports of meetings of the same kind as this particular meeting should be published, *e.g.*, that it is an accurate report of a political meeting—to obtain protection it must be proved that the publication of the very words complained of is for the public benefit. This imposes on every editor the duty of editing the whole paper; he must not trust to the proved accuracy of his reporter; he must himself read through the report and be careful to eliminate all blasphemous, seditious, and obscene matter (*u*), every unfair attack on a public man, everything defamatory of a private individual. No doubt this is almost a practical impossibility in the case of a daily paper, where the type has to be set up with the greatest possible speed; but, nevertheless, it seems to be clear law, according to the

(*q*) 13 Car. 2, c. 5; 1 W. & M. sess. 2, c. 2; 57 Geo. 3, c. 19, s. 23.

(*r*) *Rex v. Birt and others* (1834), 5 C. & P. 154; *Rex v. Fursey* (1835), 6 C. & P. 81.

(*s*) *Redford v. Birley and others* (1822), 3 Stark. 103.

(*t*) *Rex v. Hunt and others* (1819), 3 B. & Ald. 566; *Reg. v. Vincent* (1838), 9 C. & P. 91, 109.

(*u*) *Steele v. Brannan* (1872), L. R. 7 C. P. 261; 41 L. J. M. C. 85.

decision in *Pankhurst v. Sowler* (v), that unless this is done the proprietors will be liable to an action for libel.

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ARTICLE 19.—*Reports of vestry meetings, &c.*

A report published in any newspaper (x) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament (y), or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorized to act by letters patent, Act of Parliament, warrant under the Royal Sign Manual, or other lawful warrant or authority, or of select committees of either House of Parliament (z), is privileged, provided that—

- (1.) Such report is fair and accurate;
- (2.) The public or a newspaper reporter was admitted, or given an opportunity of admission, to such meeting (a);
- (3.) The matter complained of is not blasphemous or indecent; and
- (4.) The matter complained of is of public

(v) (1887), 3 Times L. R. 193.

(x) As to the meaning of "newspaper," see p. 28, *supra*.

(y) This would cover the report of the meeting of a County Council.

(z) See *Rex v. Wright* (1799), 8 T. R. 293. The 4th section of the Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), also protected reports "of any meeting . . . of justices of the peace in quarter sessions assembled, for administrative or deliberative purposes." These functions of the justices were, however, transferred by the Local Government Act, 1888, to the County Councils.

(a) See Note 1.

concern, or the publication thereof is for the public benefit. This privilege may be rebutted by proof (1) that the report was published or made maliciously; or (2) that the defendant has after request refused or neglected to insert in his newspaper a reasonable letter or statement by way of contradiction or explanation of such report (*b*).

As to provisoes (1) and (4), see respectively Article 16, Note 2, p. 29, *supra*; and pp. 35—37, *supra*, Article 18, Notes 3 and 4, p. 38, *supra*.

NOTE 1.—“The public or a newspaper reporter was admitted, OR GIVEN AN OPPORTUNITY OF ADMISSION, to such meeting.” It is submitted that the insertion of the words in capitals is in accordance with and justified by the true construction of the 4th section of the Law of Libel Amendment Act, 1888. See Appendix B., p. 103, *infra*.

NOTE 2.—It must be remembered that the report of any such meeting as the above, if published elsewhere than in a newspaper, as defined by the Newspaper Libel and Registration Act, 1881, *e.g.*, in a magazine or a monthly trade paper, is in no way privileged. See Article 16, Note 1, p. 28, *supra*. Moreover, no report of any meeting other than those dealt with in Articles 18 and 19, *supra*, is privileged, whether published in a newspaper or elsewhere. Thus, if a newspaper or periodical publishes a fair and accurate report of the proceedings at a meeting of the creditors of a bankrupt or the shareholders of a company, such report is in no way privileged, and any one defamed thereby can maintain an action for libel. In such a case the defendant has only two courses open to him—to justify the words complained of (Article 11, *supra*), or to apologise and pay money into Court (Part I.,

(*b*) 51 & 52 Vict. c. 64, s. 4, set out on pp. 103—104, *infra*.



Article 21, *infra*). The fact that the report is a fair and accurate account of what actually took place is no defence (c), though it may operate to mitigate the damages (Article 27).

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ARTICLE 20.—*Notices and reports published at request of government office or authority.*

The publication at the request of (1) any government office or department; (2) officer of state; (3) commissioner of police; or (4) chief constable, of any notice or report issued by them for the information of the public, is privileged, provided that (i.) the matter complained of is not blasphemous or indecent; and (ii.) the matter complained of is of public concern, or the publication thereof is for the public benefit. But this privilege may be rebutted by proof (1) that such publication was published or made maliciously; or (2) that the defendant has, after request, refused or neglected to insert in his newspaper a reasonable letter or statement by way of contradiction or explanation of such publication (d).

NOTE.—It will be observed that this Article only deals with notices or reports published AT THE REQUEST OF ANY GOVERNMENT OFFICE OR AUTHORITY. Two points should be noticed—

(1.) That the publication of a notice or report issued by any other body, *e.g.*, a vestry, is not privileged until officially published; and it would seem that this is so, even where official publication is authorized by Act of Parliament (e).

(c) *Davison v. Duncan* (1857), 26 L. J. Q. B. 104; 28 L. T. O. S. 265; 7 E. & B. 229; 3 Jur. N. S. 613; 5 W. R. 253.

(d) 51 & 52 Vict. c. 64, s. 4, set out on pp. 103—104, *infra*.

(e) *Popham v. Pickburn* (1862), 31 L. J. Ex. 133; 5 L. T. 846 7 H. & N. 891; 26 J. P. 646; 8 Jur. N. S. 179; 10 W. R. 324.

(2.) That the publication of all reports, papers, votes, and proceedings by order of either House of Parliament is absolutely privileged (*e*).

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ARTICLE 21.—*Defence of apology under sect. 2 of Lord Campbell's Act, 6 & 7 Vict. c. 96.*

In an action for libel contained in any public newspaper or other periodical publication, it shall be competent to the defendant to plead that such libel was inserted in such newspaper or other periodical publication without actual malice, and without gross negligence, and that, before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel; or if the newspaper or periodical publication in which the said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action (*f*).

There must, however, be a payment of money into Court by way of amends at the time the plea is filed (8 & 9 Vict. c. 75, s. 2); and therefore, having regard to Order XXII. rule 1, no other defence denying liability can be pleaded together with such plea.

NOTE.—It should be noticed that this defence is available to every action for a libel contained in any "PUBLIC NEWSPAPER OR OTHER PERIODICAL PUBLICATION," words which would apparently cover almost every kind of journal-

(*e*) 3 & 4 Vict. c. 9; *supra*, Article 15.

(*f*) 6 & 7 Vict. c. 96 (Lord Campbell's Act), s. 2.

istic publication. It is not enough for the defendant to plead that he inserted the apology "at the earliest opportunity after" the commencement of the action, if he had an earlier opportunity (*g*). Any defendant relying upon this defence must, as a rule, offer some evidence to prove positively that there was no gross negligence on his part (*h*).

The apology should be full and free, and published in a conspicuous part of the paper. It should be given at least as prominent a position as the words complained of.

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ARTICLE 22.—*Accord and satisfaction.*

ACCORD AND SATISFACTION is an agreement that the plaintiff will forego his right of action on the execution of a valuable consideration. Such agreement may be made by the defendant himself (*i*), or by one jointly liable with him (*k*), or by a third party (*l*), and is a good defence to an action for libel.

NOTE.—Thus the defendant will escape liability by proving that the plaintiff agreed to accept from him certain apologies in full discharge of the plaintiff's cause of action, and that in pursuance thereof he published such apologies in the manner agreed upon (*i*).

(*g*) *Per* Keating, J., in *Ravenhill v. Upcott* (1868), 33 J. P. 229.

(*h*) *Per* Wills, J., in *Peters and another v. Edwards and another* (1887), 3 Times L. R. 423.

(*i*) *Lane v. Applegate* (1815), 1 Stark. 97; *Boosey v. Wood* (1865), 34 L. J. Ex. 65; 3 H. & C. 484; *Marks v. Conservative Newspaper Co.* (1886), 3 Times L. R. 244.

(*k*) *Hey v. Moorhouse and others* (1839), 6 Bing. N. C. 52; *Thurman v. Wild and another* (1840), 11 A. & E. 453; *Bainbridge v. Lax and others* (1846), 9 Q. B. 819.

(*l*) *Jones and another v. Broadhurst* (1850), 9 C. B. 173.

ARTICLE 23.—*Release.*

The plaintiff may release his cause of action by executing a deed to that effect.

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ARTICLE 24.—*Previous action.*

It is a good defence that the plaintiff has already brought an action in respect of the same libel against the defendant or a third person with whom the defendant was jointly concerned in the publication of the libel.

NOTE.—This is so whether the plaintiff has failed or succeeded in the previous action. The defendant must be *jointly* not *severally* concerned with the third party. Thus, where the third person against whom the previous action has been brought is a partner of the defendant in a firm of printers or publishers, the liability being joint (Article 9), the fact that there has been a previous action against one of the partners is an answer to an action in respect of the same libel against the other partner. But where the liability is *several*, as, *e.g.*, in the case of the author of a libel and the proprietor of the newspaper in which it has appeared (*m*), a previous action against one of them is no answer to an action against the other (*n*).

(*m*) See Article 8, *supra*.

(*n*) *Creedy v. Carr* (1835), 7 C. & P. 64; *Frescoe v. May* (1860), 2 F. & F. 123.

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ARTICLE 25.—*Statute of Limitations.*

An action for libel must be brought within six years from the date of publication (*o*), unless the plaintiff was at that date an infant, a married woman, or a lunatic, or the defendant was beyond the seas, in the former of which cases the action must be brought within six years from the time at which such disability is removed (*p*), in the latter within six years from the time at which the defendant returns (*q*).

NOTE.—“Beyond the seas.” This expression does not include any part of the United Kingdom or the Channel Islands. Formerly, by 21 Jac. 1, c. 19, if at the date of publication of the libel the plaintiff were imprisoned or beyond the seas, he could bring his action at any time within six years from his freedom or return, but this right was abolished by the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), sect. 10.

It should be noticed that if once the plaintiff cease to be under any disability—in which case the time begins to run—no subsequent disability can affect the operation of the statute or prevent the time from continuing to run against the plaintiff. A publication contrived by the plaintiff, *e.g.*, a sale of the libellous newspaper to his agent for the express purpose of maintaining the action, is a fresh publication from the date of which the time will begin to run again, even though the real grievance be a publication many years before that date. Thus, in the case of *The Duke of Brunswick v. Harmer* (*r*), a sale to the plaintiff's agent of

(*o*) *Lord Saye and Sele v. Stephens* (1628), cited Cro. Car. 535; Litt. 342.

(*p*) 21 Jac. 1, c. 19, s. 7; 4 & 5 Anne, c. 3 [al. c. 16], s. 19; 3 & 4 Will. 4, c. 42, s. 7; 19 & 20 Vict. c. 97, s. 12.

(*q*) 4 & 5 Anne, c. 3 [al. c. 16], s. 19; 19 & 20 Vict. c. 97, s. 12.

(*r*) (1849), 19 L. J. Q. B. 20; 3 C. & K. 10; 14 Jur. 110; 14 Q. B. 185.

a copy of the newspaper containing the libel seventeen years after its original publication, was held to constitute a fresh publication, from the date of which the Statute of Limitations would begin to run anew.

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ARTICLE 26.—*Evidence in aggravation of damages.*

At the trial of an action for libel in any newspaper the plaintiff may prove in aggravation of damages the circumstances under which the libel was published (*s*).

NOTE.—Thus, the plaintiff may show that the libel was scattered broadcast when the defendant was under no duty and had no right to publish it except to a limited number of persons (*t*). He may show that the defendant was culpably negligent (*u*); that he could without any difficulty have discovered that his charges were unfounded, or that he persisted in maintaining their truth even at the trial itself (*x*). But he is not allowed, in order to aggravate the damages, to give evidence of his good character unless the defendant has previously suggested on the pleadings or in cross-examination that it is bad (*y*). Neither is he

(*s*) *Vines v. Serell* (1835), 7 C. & P. 163; *Darby v. Ouseley* (1856), 25 L. J. Ex. 233; *Blake v. Stevens and others* (1864), 11 L. T. 543; 4 F. & F. 235; *Risk Allah Bey v. Whitehurst* (1868), 18 L. T. N. S. 615.

(*t*) *Gathercole v. Miall* (1846), 15 L. J. Ex. 179; 10 Jur. 337; 15 M. & W. 319; *Stockdale v. Hansard* (1839), 9 A. & E. 149; *De Crespigny v. Wellesley* (1829), 5 Bing. 402.

(*u*) *Smith v. Harrison* (1856), 1 F. & F. 565.

(*x*) *Warwick v. Foulkes* (1844), 12 M. & W. 508; *Wilson v. Robinson* (1845), 7 Q. B. 68; 14 L. J. Q. B. 196; 9 Jur. 726; *Simpson v. Robinson* (1848), 12 Q. B. 511; 18 L. J. Q. B. 73; 13 Jur. 187.

(*y*) *Cornwall v. Richardson* (1825), Ry. & M. 305; *Guy v. Gregory* (1840), 9 C. & P. 587; *Brine v. Bazalgette* (1849), 18 L. J. Ex. 348; 3 Ex. 692.

allowed, with the same object in view, to prove that the defendant has published other libels of him (z).

ARTICLE 27.—*Evidence in mitigation of damages.*

At the trial of an action for a libel in any newspaper, the defendant may prove in mitigation of damages (1) that the plaintiff has already recovered (or brought actions for) damages, or has received, or agreed to receive, compensation in respect of a libel or libels, to the same purport or effect as the libel for which such action has been brought (a); (2) (after notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the plea in such action) that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology (b); (3) the circumstances under which the libel was published or the character of the plaintiff, provided that he has furnished the particulars thereof to the plaintiff seven days at least before the trial, or has pleaded the truth of the words complained of, otherwise he cannot give such evidence except by leave of the judge (c).

NOTE 1.—The first of the above provisions, which was introduced by the Act of 1888, is a very valuable one to newspaper proprietors. Prior to that Act, *e.g.*, if a country

(z) *Pearson v. Lemaitre* (1843), 12 L. J. Q. B. 253; 7 Jur. 748; 7 J. P. 336; 5 M. & Gr. 719; 6 Scott, N. R. 607.

(a) Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 6. See Note 1, and p. 105, *infra*.

(b) Lord Campbell's Act (6 & 7 Vict. c. 96, s. 1). See Note 2.

(c) Rules of Supreme Court, 1883, Order XXXVI. r. 37. See Note 2.

newspaper had copied a libellous article from a London newspaper, evidence could not be given that the plaintiff had already recovered damages against the London paper for the same article (*d*). It will be observed that the provision is confined to libels appearing in a newspaper as defined by the Act, so that it has no application to any libel which appears elsewhere, *e.g.*, in a monthly periodical or book (*e*).

NOTE 2.—The second and third of the above provisions may be taken advantage of by any defendant to an action for libel *wherever published*. Wherever the defendant can make use of the latter provision he should be careful to give the seven days' notice required by it, as otherwise he will not be entitled, without the special leave of the judge who tries the case, to give evidence, which in many cases will prevent the plaintiff from obtaining other than nominal damages. The effect of Order XXXVI., rule 37, which provides for the above notice being given, is not to enable the defendant to give in evidence what, before that rule came into force, he could not give, but merely to prevent him from giving the evidence therein specified, unless he does give such notice. He may not, of course, go into irrelevant matters (*f*). Thus he cannot be permitted to show that the plaintiff has not contradicted or complained of previous publications by some other person of the same libel (*g*). He may, however, always give evidence to prove that he was not acting maliciously but in good faith. Thus, in *Harle v. Catherall and others* (*h*), where the defendant, an editor, declined to discover the

(*d*) *Hunt v. Algar and others* (1833), 6 C. & P. 245.

(*e*) See *supra*, Article 16, Note 1, p. 28.

(*f*) *Cooke v. Hughes* (1824), R. & M. 112; *Darby v. Ouseley* (1856), 25 L. J. Ex. 227; 1 H. & N. 1; 2 Jur. N. S. 497.

(*g*) *Rea v. Holt* (1792), 5 T. R. 436; *per* Maule, J., in *Ingram v. Lawson* (1840), 9 C. & P. 333; and *Pankhurst v. Hamilton* (1886), 2 Times L. R. 682.

(*h*) (1866), 14 L. T. 801.



name of the writer of the libel, but threw open his columns to the plaintiff who wrote a number of letters in explanation and contradiction of the charge which the defendant editor inserted, it was held that the defendant was entitled to prove these facts in mitigation of damages. So, too, in *Smith v. Scott* (i), where the libel was contained in an inaccurate report of proceedings in a Court of justice, evidence was admitted to show that the inaccuracy was caused by accident, and was not intentional on the part of the defendant.

That some other newspaper or individual has previously published the same charges against the plaintiff and has not been sued is no defence, nor is it even admissible as evidence in mitigation of damages (k). If, however, the libel appears on the face of it to be copied from a certain newspaper or communicated by a particular correspondent, the defendant may prove in mitigation of damages that a paragraph to the same effect did appear in that newspaper, or that the libel was in fact communicated to him by such correspondent (l). Evidence of rumours to the same effect as the libel complained of is inadmissible (m). But still, if defendant can prove that in copying the libel from

(i) (1847), 2 C. & K. 580. See also *East v. Chapman* (1827), 2 C. & P. 570; *M. & M.* 46; *Vessey v. Pike* (1829), 3 C. & P. 512; *Charlton v. Watton* (1834), 6 C. & P. 385; *Pearson v. Lemaitre* (1843), 12 L. J. Q. B. 253; 7 J. P. 336; 7 Jur. 748; 5 M. & Gr. 700; 6 Scott, N. R. 607.

(k) *Saunders v. Mills* (1829), 6 Bing. 213; 3 M. & P. 520; *Talbutt v. Clark and another* (1840), 2 M. & Rob. 312; *Reg. v. Newman* (1853), 22 L. J. Q. B. 156; 3 C. & K. 252; *Dears. C. C.* 85; 1 El. & Bl. 268, 558; 17 Jur. 617; *Tucker v. Lawson* (1886), 2 Times L. R. 593.

(l) *Mills and wife v. Spencer and wife* (1817), Holt, N. P. 533; *Bennett v. Bennett* (1834), 6 C. & P. 588; *Duncombe v. Daniell* (1837), 8 C. & P. 222; 2 Jur. 32; 1 W. W. & H. 101; *per* Wightman, J., in *Davis v. Cutbush* (1859), 1 F. & F. 487.

(m) *Scott v. Sampson* (1882), 8 Q. B. D. 491; 51 L. J. Q. B. 380; 46 L. T. 412; 46 J. P. 488; 30 W. R. 541.

another newspaper or (*semble*) in inserting the libellous communication of a correspondent, he was careful to omit certain parts which referred in very strong terms to the plaintiff, his conduct in so doing is admissible as evidence to prove absence of malice, and this necessitates the admission in evidence of the original libel (*n*). And defendant can prove in mitigation of damages that plaintiff had, prior to the publication of the libel complained of, libelled or slandered the defendant, provided that he can also prove that this provoked him to retaliate by publishing the libel sued for (*o*), but not otherwise (*p*).

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ARTICLE 28.—*Consolidation of actions.*

It shall be competent for a judge or the Court, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel, brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect to the same, or substantially the same, libel, shall also be entitled to be joined in a common action upon a joint application being

(*n*) *Creevey v. Carr* (1835), 7 C. & P. 64; *De Bensaude v. Conservative Newspaper Co.* (1887), 3 Times L. R. 538.

(*o*) *Finnerty v. Tipper* (1809), 2 Camp. 76; *Wakley v. Johnson* (1826), Ry. & M. 422; *Tarpley v. Blabey* (1835-36), 2 Bing. N. C. 437; 7 C. & P. 395; 2 Scott, 642; *Watts v. Fraser and another* (1837), 7 A. & E. 223; 7 C. & P. 369; 1 M. & Rob. 449; 2 N. & P. 157.

(*p*) *May v. Brown* (1824), 3 B. & C. 113; 4 D. & R. 670.

made by such new defendants and the defendants in the actions already consolidated (*p*).

NOTE.—This is a most valuable provision to newspaper proprietors, and is aimed at preventing the repetition of such cases as *Tucker v. Lawson* (*q*), and *Colledge v. Pike* (*r*), where a series of actions were brought against different newspapers for the same libel which they had all copied, and heavy damages recovered against each. Prior to the Law of Libel Amendment Act, 1888, it was held (*s*) that in such a case, inasmuch as there were distinct and separate publications, and consequently the liabilities of the various defendants were different, there could be no consolidation of the actions, and the only relief which the defendants could obtain was in regard to costs, and this was effected by obtaining a stay of all the actions except one. Each defendant was then liable for whatever damages the plaintiff recovered in that action, and by this means a plaintiff might, of course, recover enormous damages for what was, in reality, the same libel. By this Act, however, such a course is rendered impossible, as the actions may be consolidated, and as will be seen by Article 29 (*infra*), the jury can now apportion the amount of damages between the defendants. It will be noticed that the above provision is of general application, and is not confined to the case of “actions in respect to the same, or substantially the same, libel,” appearing in different “newspapers,” as defined by sect. 1 of 51 & 52 Vict. c. 64 (*t*).

(*p*) 51 & 52 Vict. c. 64, s. 5.

(*q*) (1886), 2 Times L. R. 593.

(*r*) (1886), 56 L. T. 124.

(*s*) In *Colledge v. Pike* (1886), 56 L. T. 124.

(*t*) See *supra*, p. 28.

ARTICLE 29.—*Assessment of damages in a consolidated action.*

In a consolidated action, the jury shall assess the whole amount of damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they shall have so found between and against the said last-mentioned defendants<sup>(u)</sup>; and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants<sup>(v)</sup>.

NOTE.—This enables a jury, after assessing the damages suffered by the plaintiff in a consolidated action (see preceding Article), *i. e.*, the amount recoverable in all the actions, to go further, and apportion the amount of damages recoverable against each defendant. Without this provision, each defendant would of course be liable for all the damage, as, indeed, he still is in any action not coming within the meaning of a consolidated action under this and the preceding Article, *i. e.*, under sect. 5 of the Law of Libel Amendment Act, 1888.

(u) See Note.

(v) 51 & 52 Vict. c. 64, s. 5.

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ARTICLE 30.—*Injunctions.*

The court has jurisdiction to restrain the publication of a libel by granting an interim (*x*), or final (*y*), injunction; but in the former case, the jurisdiction will be exercised with great caution (*x*).

NOTE.—In order to obtain an interim injunction, the plaintiff must prove that the words complained of are untrue (*z*), so that any subsequent publication by the defendant would be *mala fide* (*a*), and no such injunction will be granted where the words complained of are *prima facie* privileged (*b*), or may be fair and *bona fide* comment on a matter of public interest (*c*).

(*x*) *Quartz Hill Gold Mining Co. v. Beall* (1882), 20 Ch. D. 501 (C. A.); 51 L. J. Ch. 874; 46 L. T. 746; 30 W. R. 683.

(*y*) *Saxby v. Easterbrook* (1878), 3 C. P. D. 339; 27 W. R. 188; *Thorley's Cattle Food Co. v. Massam* (1880), 14 Ch. D. 781 (C. A.); 42 L. T. 851; 28 W. R. 966.

(*z*) *Burnett v. Tak* (1882), 45 L. T. 743.

(*a*) *Halsey v. Brotherhood* (1891), 19 Ch. D. 386 (C. A.); 51 L. J. Ch. 233; 45 L. T. 640; 30 W. R. 279; *Anderson v. Liebig's Extract of Meat Co., Limited* (1882), 45 L. T. 757; *Hill v. Hart-Davies* (1882), 21 Ch. D. 798; 51 L. J. Ch. 845; 47 L. T. 82; 31 W. R. 22; *Société Anonyme des Manufactures de Glaces v. Tilghman's Patent Sand Blast Co.* (1883), 25 Ch. D. 1 (C. A.); 53 L. J. Ch. 1; 49 L. T. 451; 48 J. P. 68; 32 W. R. 71.

(*b*) *Quartz Hill Gold Mining Co. v. Beall*, *supra*.

(*c*) *Armstrong and others v. Armit and others* (1886), 2 Times L. R. 887.

ARTICLE 31.—*Costs.*

If the action is tried without a jury the costs are in the discretion of the judge, and if he makes no order each party must pay his own costs. If the action is tried with a jury, the costs follow the event, unless for good cause the judge otherwise orders (*d*).

NOTE.—It is almost the invariable practice to try an action for libel with a jury, and therefore, generally speaking, if the plaintiff recovers any damages at all he gets his costs—unless the judge for good cause deprive him of them. As to what constitutes “good cause,” see *Hughes v. Merrett* (*e*) (where the plaintiff recovered a farthing damages and the judge deprived him of his costs) and *Jones v. Curling* (*f*).

(*d*) Rules of the Supreme Court, 1883, Order LXV. r. 1.

(*e*) (1886), 17 Q. B. D. 373.

(*f*) (1885), 13 Q. B. D. 262; 53 L. J. Q. B. 373.

PART II.  
OF LIABILITY TO CRIMINAL PROCEEDINGS.

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ARTICLE 1.—*Libel a crime.*

THE publication of a libel is a crime punishable by fine and imprisonment (*a*), for which proceedings may (subject to Article 4, *infra*) be taken by way of information or indictment.

NOTE 1.—Whatever amounts to a libel in a civil action (see Part I., Article 1), will be held a libel on a criminal trial; the term has indeed a more extended application in the latter case, for it is a crime, though not actionable (*b*), to write and publish words injurious to the reputation of any deceased person (*c*), or of any collection of individuals, without referring to any individual in particular (*d*), provided in both cases that such words tend to provoke a breach of the peace. Thus, it has been held a libel in

(*a*) See 6 & 7 Vict. c. 96, ss. 4, 5, p. 85, *infra*.

(*b*) Owing to there being no proper plaintiff. *Rex v. Darby* (1687), 3 Mod. 139.

(*c*) *Rex v. Topham* (1791), 4 T. R. 126; *per contra Reg. v. Ensor* (1887), 3 Times L. R. 366. The dicta in *Reg. v. Labouchere* (1884), 12 Q. B. D. 320, only affect the remedy by way of information.

(*d*) *Rex v. Osborn* (1732), W. Kelynge, 230; 2 Barnard. 138, 166; *Rex v. J. A. Williams* (1822), 2 B. & Ald. 595; 2 Townsend's Mod. St. Tr. 231; *Rex v. Gathercole* (1838), 2 Lewin, C. C. 237.

riminal law, to write and publish defamatory words of "certain Jews lately arrived from Portugal, and living near Broad Street," although no particular Jew was named (*d*), similarly, where a certain nunnery was libelled, although no reference was made to any special individual (*e*).

NOTE 2.—The subject of procedure is not, properly speaking, the subject of this work, but it may, perhaps, be useful to give a brief outline of the different steps to be taken in each case according as the prosecution proceed by way of information or indictment.

I. Where the proceedings are by way of information. A criminal information may be (*a*) *ex officio*, *i. e.*, filed by the Attorney-General,—a course which is however only adopted in very serious and pressing cases of a public nature, and the latest example of which was in 1830; or (*b*) filed by the Queen's coroner and attorney by "express order of the Queen's Bench Division in open Court" (*f*). In the latter case, counsel for the prosecution must, "within a reasonable time after the offence complained of," move the Divisional Court upon affidavits for an order *nisi*, calling upon the defendant to show cause why an information should not be filed (Crown Office Rules, 1886, r. 48). The rule *nisi*, if granted, is then drawn up and served on the defendant who shows cause. If the rule is then made absolute, the prosecutor enters into a recognizance of 50%, "effectually to prosecute such information, and to abide by and observe such orders as the Court shall direct," and then proceeds to trial as directed by the Crown Office Rules, 1886. The trial itself is precisely similar to the trial of an indictment (as to which, see *infra*), except that in *ex officio* informations the Crown has the right of reply, even though no witnesses be called for the defence.

(*d*) *Rex v. Gathercole*, *supra*.

(*e*) *Rex v. Osborn*, *supra*.

(*f*) 4 Will. & Mary, c. 18, s. 1; Crown Office Rules, 1886, r. 46.



II. Where the proceedings are by way of indictment, the prosecutor must—

- (a) Obtain an order from a judge in chambers under sect. 8 of the Law of Libel Amendment Act, 1888, provided that the libel has been published in a newspaper as defined by that Act (Article 4, *infra*, and note thereto);
- (b) Charge the defendant before a magistrate (see Appendix A., p. 69, *infra*); and if he obtain a committal,
- (c) Prefer an indictment before the grand jury, when, if a true bill be found, he will
- (d) Proceed to trial before a judge and jury at the Central Criminal Court or the Assizes, as the case may be.

The prosecution must satisfy the jury that the words complained of are libellous, that they referred to the prosecutor, and were so understood by those to whom they were published (Part I., Article 2), that they were published by the defendant (Part II., Article 3), and published moreover by him in the county in which the venue has been laid. As to the defences which may then be set up, see Part II., Article 5, *infra*.

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ARTICLE 2.—*Blasphemous, seditious, and obscene words, &c.*

The publication of a blasphemous (*g*), seditious (*h*), or obscene (*i*) representation in writing,

(*g*) *Rex v. Williams* (1797), 26 How. St. Tr. 656; *Rex v. Carlile* (1819), 3 B. & Ald. 161; 1 Edw. 6, c. 1, s. 1; 2 & 3 Edw. 6, c. 1, ss. 2, 3; 1 Eliz. c. 2, ss. 2, 3; 13 Eliz. c. 12, s. 2; 14 Car. 2, c. 4, s. 1; 9 Will. 3, c. 35; 53 Geo. 3, c. 160.

(*h*) 60 Geo. 3, and 1 Geo. 4, c. 8, s. 1.

(*i*) *Rex v. John Wilkes* (1770), 4 Burr. 2527; Dig. 22, 69; 2 Wils. 151; *Rex v. Curl* (1727), 1 Barnard. 29; 2 Strange, 788; *Rex v. Stuart*, 3 Chit. Crim. L. 887; *Reg. v. Carlile* (1845), 1 Cox,

printing, or other material form is a crime, punishable by fine and imprisonment, for which proceedings may be taken either by way of information or indictment.

As to the meaning of the term "publication," see Part II., Article 3, and of the words "representation in writing, printing, or other material form," see Part I., Article 1, note.

NOTE 1.—It is difficult to precisely define the meaning of the word "blasphemous" in the above article, but it would seem that to come within that meaning the matter published must relate to God, Jesus Christ, the Holy Ghost, the Bible, the Book of Common Prayer, or Christianity in general (*k*), and the publication must be made with intent to wound the feelings of believers, or to lead astray the uneducated. This particular intent is the gist of the offence, and is usually inferred from the intemperate and scurrilous tone adopted by the defendant. In the absence of such an intent there is no blasphemy. In the words of Best, C. J., "every man may fearlessly advance any new doctrines, provided he does so with proper respect to the religion and government of the country" (*l*), or as Erskine, J., put it in a later case "by the law of this country, every man has a right to express his sentiments in decent language" (*m*), and finally to quote the latest expression of judicial opinion on the subject, that of the present Lord Chief Justice in *Reg. v. Ramsey and Foote* (*n*), "If the decencies of controversy are observed, even the fundamentals of religion may be attacked without a person being guilty of blasphemous libel."

C. C. 229; *Reg. v. Hicklin* (1868), L. R. 3 Q. B. 360; 37 L. J. M. C. 89; 18 L. T. 398; 11 Cox, C. C. 19; 20 W. R. 607.

(*k*) See note (*g*), *ante*.

(*l*) *Rex v. Burdett* (1820), 4 B. & Ald. 132.

(*m*) *Reg. v. Adams* (1842), Trial of Holyoake, London, 1842.

(*n*) (1883), 48 L. T. 379; 1 C. & E. 146; 15 Cox, C. C. 231.

NOTE 2.—For a representation to be “seditious” it must be published with intent “to bring into hatred or contempt or to excite disaffection against the person of her Majesty, her heirs or successors, or the government and constitution of the United Kingdom as by law established, or either House of Parliament, or the administration of justice, or to excite her Majesty’s subjects to attempt, otherwise than by lawful means, the alteration of any matter in church or state by law established, or to raise discontent or disaffection amongst her Majesty’s subjects, or to promote feelings of ill-will and hostility between different classes of such subjects” (o).

NOTE 3.—As to what constitutes an “*obscene*” representation we cannot do better than quote the words of Cockburn, L. C. J., in *Reg. v. Hicklin* (p), who said, “I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.” The question of what circumstances will be sufficient to justify the publication of obscene matter is a difficult one. Mr. Justice Stephen in his Digest of the Criminal Law (q), has dealt with it at length and comes to the conclusion that “a person is justified in publishing obscene books, papers, writings, prints, pictures, drawings, or other representations, if their publication is for the public good, as being necessary or advantageous to religion or morality, to the administration of justice, the pursuit of science, literature or art, or other objects of general interest; but the justification ceases if the publication is made in such a manner, to such an extent, or under such circumstances, as to exceed what the public good requires in regard to the particular matter published.”

(o) Stephen’s Digest of the Criminal Law, 4th ed. Art. 93. See also 60 Geo. 3 & 1 Geo. 4, c. 8, s. 1, at p. 76, *infra*.

(p) (1868), L. R. 3 Q. B. 360; 37 L. J. M. C. 89; 18 L. T. 398; 11 Cox, C. C. 19; 20 W. R. 607.

(q) 4th ed. Art. 172, and Note v.

As to the power of a stipendiary magistrate or two justices of the peace to suppress and destroy obscene publications, see 20 & 21 Vict. c. 83, in Appendix B., p. 91, *infra*.

As to summary conviction for affixing to any wall, fence, hoarding, &c., or publishing, any picture, or printed or written matter, which is of an indecent or obscene nature, see the Indecent Advertisements Act, 1889, 52 & 53 Vict. c. 18, set out in Appendix B., p. 107, *infra*.

NOTE 4.—It should be noticed that a defendant is not allowed to set up as a defence to a blasphemous, seditious or obscene libel that it is true and that it is for the public benefit that it should be published (*r*).

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### ARTICLE 3.—*Publication.*

In criminal cases it is not absolutely necessary that there should be publication, *i. e.*, a communication of the words complained of to some third party—it is sufficient if the words complained of be communicated to the prosecutor himself, provided that their natural tendency is to provoke the prosecutor, and excite him to commit a breach of the peace (*s*).

NOTE.—It must also be remembered that in criminal cases the question of publication is entirely a question for the jury (Article 8, *infra*), not as in civil cases (Part I., Article 4), partly for the judge and partly for the jury. With the exception of this difference, and that pointed out

(*r*) *Cooke v. Hughes* (1824), Ry. & M. 115; *Reg. v. Duffy* (1870), 9 Ir. L. R. 329; 2 Cox, C. C. 45; *Ex parte O'Brien* (1883), 12 L. R. Ir. 29; 15 Cox, C. C. 180.

(*s*) *Rex v. Garret, Hicks' case* (1618), Hob. 215; Poph. 139; *Clutterbuck v. Chaffers* (1816), 1 Stark. 471; *Rex v. Wegener* (1817), 2 Stark. 245; *Phillips v. Jansen* (1798), 2 Esp. 624; *Reg. v. Brooke* (1856), 7 Cox, C. C. 251.

above, the law of publication in criminal libel is the same as that in civil cases. (Part I., Articles 3 and 5.) As Bayley, J., well puts it in *Rex v. Carlile* (t), "Not only the party who originally prints, but every party who utters, who sells, who gives, or who lends a copy of an offensive publication will be liable to be prosecuted as a publisher. The mere delivery of a libel to a third person by one conscious of its contents amounts to a publication, and is an indictable offence" (u).

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ARTICLE 4.—*No prosecution for newspaper libel except by leave of judge.*

No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper (x), for any libel published therein without the order of a judge at Chambers being first had and obtained. Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application (y).

NOTE.—This provision replaced sect. 3 of the Newspaper Libel and Registration Act, 1881, which required the fiat of the Director of Public Prosecutions before a criminal prosecution could be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein. The repealed section really afforded little or no protection to the proprietor or editor of a newspaper, for as Lord Coleridge

(t) (1819), 3 B. & Ald. 169. See also *Rex v. Dover* (1663), 2 Harg. St. Tr. 457; 6 How. St. Tr. 547; *Reg. v. Stanger* (1871), L. R. 6 Q. B. 352; 40 L. J. Q. B. 96; 24 L. T. 266; 35 J. P. 84, 580; 19 W. R. 640.

(u) *Per Wood, B.*, in *Maloney v. Bartley* (1812), 3 Camp. 213.

(x) As to meaning of "newspaper," see p. 28, *supra*.

(y) 51 & 52 Vict. c. 64, s. 8.

pointed out in the House of Lords, the Director of Public Prosecutions frequently issued his fiat for the institution of criminal proceedings for libels in newspapers when he ought to have refused it. The judge in chambers will make no order under this section unless he is satisfied that the case is one which will not be met by a civil action.

Having regard to the construction placed by the Court upon the 3rd section (now repealed) of the Act of 1881, it would seem that the above provision has no application to any criminal *information* (y). Moreover, its advantages are limited to "the proprietor, publisher, editor, or any person responsible for the publication of a newspaper," as to which several points are noticeable. In the first place it affords no protection to the actual composer, or author of the libel, to the reporter, or the writer of any article, even though attached to the staff of the newspaper, or to the compositor, or the office boy, all of whom are liable to be prosecuted at common law. It is doubtful whether it includes the printer under the phrase "person responsible for the publication." The Act of 1888, unlike that of 1881, contains no definition of proprietor, so that it is difficult to say precisely what construction the Court will put upon the term. It would seem unlikely, in the absence of any express clause to that effect, that the wide meaning given to it in the Act of 1881 will be held applicable. Further, it will be noticed that the section is confined to *newspapers* as defined by the Act of 1888 (z), *i. e.*, as defined by sect. 1 of the Act of 1881. Therefore it has no application to books or periodicals not coming within that definition, *q. v.*, p. 28, *supra*.

(y) *Reg. v. Yates* (1883), 11 Q. B. D. 750; 52 L. J. Q. B. 778; 15 Cox, C. C. 272; 48 J. P. 102; *Yates v. The Queen* (1885), 14 Q. B. D. 648 (C. A.); 54 L. J. Q. B. 258; 52 L. T. 305; 15 Cox, C. C. 686; 49 J. P. 436; 33 W. R. 482.

(z) 51 & 52 Vict. c. 64, s. 1.

ARTICLE 5.—*Defences.*

The defences to criminal proceedings for libel are—

1. That the words complained of are true, and that it was for the public benefit that they should be published (*b*). (Article 6, *infra*.)

2. That the publication of the words complained of is privileged. (See Note, *infra*, and Part I., Articles 14—20.)

3. That the words complained of are a fair and *bonâ fide* comment on a matter of public interest. (See Note, *infra*, and Part I., Article 13.)

4. That the publication was made without the authority or knowledge of the defendant, and did not arise from want of due care or caution on his part (*c*). (Article 7, *infra*.)

NOTE.—Of the above defences those numbered 2 and 3 have already been fully dealt with in treating of the defences to an action. (See Part I. Articles 13—20.) Whether the defence be that the words complained of were published on a privileged occasion (Part I. Articles 14—20), or were a fair and *bonâ fide* comment on a matter of public interest (Part I. Article 13), the law is precisely the same in civil and criminal proceedings. And here again, as was observed in treating of the defences to an action, it may be said that it is also a defence that the words complained of are not libellous (Part I. Article 1), or do not relate to the prosecutor (Part I. Article 2), or that there has been no publication (Part II. Article 3); but in all these cases the onus of proving the contrary is on the prosecutor, and if he does not do so, he fails to make out even a *primâ facie* case.

(*b*) 6 & 7 Vict. c. 96, s. 6.

(*c*) *Ibid.* s. 7.

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ARTICLE 6.—*Defence under s. 6 of Lord Campbell's Act (6 & 7 Vict. c. 96).*

On the trial of any indictment or information for a libel, it is a good defence to prove that the words complained of are true, and that it was for the public benefit that they should be published (*d*).

NOTE.—It has already been pointed out that the truth of the words complained of affords a good defence to an action for libel; but this is not so in the case of criminal proceedings, the defendant must be prepared to go further and prove not only that the words complained of are true, but also that it was for the public benefit that they should be published. If he can satisfy a jury on both these points, he will be entitled to a verdict of not guilty by virtue of s. 6 of Lord Campbell's Act (6 & 7 Vict. c. 96). The defendant must prove the truth of the words complained of with the same exactness required of him in a civil action. (See Part I. Article 11.) It will be noticed that by the express words of the above section (*e*), this defence will not be available unless it be specially pleaded. Moreover it has no application to blasphemous, seditious, or obscene words (*f*).

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ARTICLE 7.—*Employer's criminal liability for libels published by his servants.*

Upon the trial of any indictment or information for the publication of a libel, it is a good defence to prove that such publication was made

(*d*) 6 & 7 Vict. c. 96, s. 6, p. 85, *infra*.

(*e*) See Appendix B., p. 85, *infra*.

(*f*) *Ex parte O'Brien* (1883), 12 L. R. Ir. 29; 15 Cox, C. C. 180.



without the authority, consent, or knowledge of the defendant, and that the said publication did not arise from want of due care or caution on his part (*g*).

NOTE.—This defence, which, it may be noticed, extends to *every* indictment and information for libel, owes its existence to sect. 7 of Lord Campbell's Act, and is peculiar to the criminal law. The general rule of law, as we have seen (Part I., Article 8, *supra*), is that a principal or master is liable for any libel published by his agent or servant, with his authority or consent; and this is true not only as regards liability to an action, but also as regards criminal liability. Moreover, as has been pointed out, provided that the agent or servant, in publishing such libel, was acting in pursuance of general orders, the master is equally liable to *an action*, though he was totally ignorant of the fact of publication; and, prior to Lord Campbell's Act, he would have been *criminally* liable also (*h*).

Now, however, in accordance with the above provision, the proprietor of a newspaper is not criminally liable for a libel which has been inserted in it without his knowledge or consent merely because he has given the editor a general authority to publish what he thinks proper therein (*i*). In all such cases, it will be a question for the jury whether the publication arose from any want of due care and caution on the defendant's part; and the fact that the

(*g*) 6 & 7 Vict. c. 96, s. 7.

(*h*) *Rex v. Dodd* (1736), 2 Sess. Cas. 33; *Nutt's case* (1727), 1 Barnard. K. B. 306; Fitz. 47; *Rex v. Cuthell* (1799), 27 How. St. Tr. 642; *Rex v. Walter* (1799), 3 Esp. 21; *Rex v. Gutch and others* (1829), Moo. & Mal. 433.

(*i*) *Reg. v. Holbrook and others* (1877), 3 Q. B. D. 35; 37 L. T. 530; 13 Cox, C. C. 650; 26 W. R. 144; (1878), 4 Q. B. D. 42; 48 L. J. Q. B. 113; 39 L. T. 536; 14 Cox, C. C. 185; 27 W. R. 313.

defendant has employed an editor for the management of a particular department of the newspaper, and has entrusted to him the business of deciding what articles should be inserted in the paper, is not necessarily proof of the defendant's having consented to the publication of the libel by him (*k*). This defence is available in all cases of criminal libel, blasphemous, seditious, or otherwise (*l*).

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ARTICLE 8.—*Libel or no libel a question for the jury.*

On the trial of every indictment or information the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information (*m*).

NOTE.—This famous provision was passed, it will be remembered, in the reign of George III., mainly through the instrumentality of Mr. Fox, and is contained in the statute known as Fox's Libel Act (32 Geo. 3, c. 60). Prior to this provision becoming law it had come to be the practice for the judge, and not the jury, to decide whether the words complained of were or were not a libel, inasmuch as, on proof of publication by the defendant of the words complained of, and of the sense ascribed to them in the indictment or information, the judge would, as in the famous trial of the Dean of St. Asaph (*n*), direct the jury

(*k*) *Per* Cockburn, C. J., and Lush, J.; Mellor, J., *diss.*, in *Reg. v. Holbrook*, *supra*.

(*l*) *Reg. v. Bradlaugh and others* (1883), 15 Cox, C. C. 217; *Reg. v. Ramsey and Foote* (1883), 48 L. T. 734; 1 C. & E. 132; 15 Cox, C. C. 231.

(*m*) 32 Geo. 3, c. 60 (Mr. Fox's Act), s. 1.

(*n*) *Rex v. Shipley* (1784), 4 Dougl. 73; 21 St. Tr. 1043; 3 T. R. 428, n.

to find the defendant guilty. The judge is, of course, still at liberty to explain to the jury any point of law, and, if he thinks it proper to do so, he may state his own opinion (*o*), but the jury "are the sole judges of the guilt or innocence of the defendant . . . . [they] are the judges of law and fact, and on them rests the whole responsibility. In this sense the jury are the true guardians of the liberty of the press" (*p*). It may be mentioned that sect. 3 of the Act expressly reserves the right of the jury to find "a special verdict in their discretion, as in other criminal cases."

(*o*) 32 Geo. 3, c. 60, s. 2.

(*p*) *Per* Fitzgerald, J., in *Reg. v. Sullivan* (1868), 11 Cox, C. C. 52.



## APPENDIX A.

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### HEARING BEFORE STIPENDIARY MAGISTRATE OR JUSTICES OF THE PEACE.

ON a charge of libel before a stipendiary magistrate or two justices of the peace, the defendant usually appears in answer to a summons; but if he does not do so the Court may, if satisfied that the summons has been duly served upon him, proceed to hear the case although he is not present, or—the course generally adopted in practice—issue a warrant for his apprehension, under 11 & 12 Vict. c. 42, s. 1. At common law, upon the hearing there are only two questions for the consideration of the Court—“first, whether the matter complained of was libellous, and secondly, whether the publication of it was brought home to the accused” (*a*). After hearing the complainant’s case the Court will inquire of the accused whether he wishes to call any witnesses (*b*), and evidence on his behalf will then be admissible to prove that the words complained of are no libel (Part I., Article 1; Part II., Article 1, note); that they do not relate to the complainant (Part I., Article 2); that they were not published by the accused (Part II., Article 3); that their publication is absolutely privileged (Part I., Articles 15, 16); or a fair and *bond fide* comment on a matter of public interest (Part I., Article 13). The Court will then

(*a*) *Per* Cockburn, C. J., in *Reg. v. Curden* (1879), 5 Q. B. D. 6, 7; 49 L. J. M. C. 1; 41 L. T. 504; 14 Cox, C. C. 359; 28 W. R. 133.

(*b*) 30 & 31 Vict. c. 35, s. 3.

either dismiss the case, or, if satisfied that there are reasonable grounds for doing so, will commit the accused for trial.

So much, then, for the jurisdiction at common law. Let us now proceed to consider what alterations have been introduced by statute. In the first place, by sect. 4 of the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), "a Court of summary jurisdiction, upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or any other Act, or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment, and the Court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case."

This section effected a great change in the law so far as the press were concerned. Its object is to enable a magistrate, upon the hearing of a charge of libel against any of the persons mentioned, to receive and hear such evidence as would be admissible on the trial of an indictment for libel, and, if he should be of opinion that at the trial the defendant would be acquitted, to dismiss the case. "Independently of statute the magistrate could not receive evidence of the truth of the libel" (c), because that was no defence to criminal proceedings. "The question then arises, whether [sect. 6 of] Lord Campbell's Act (d) enables him to do so. In my opinion," says Cockburn, L. C. J., "it does not, because the defence founded upon the truth

(c) *Per* Cockburn, C. J., in *Reg. v. Carden* (1879), 5 Q. B. D. 6, 7; 49 L. J. M. C. 1; 41 L. T. 504; 14 Cox, C. C. 359; 28 W. R. 133.

(d) See p. 85, *infra*.

of the libel does not arise at that stage and cannot be put forward before the magistrate. Suppose the defendant had succeeded fully and entirely in showing the truth of the libel; what, then, would have been the duty of the magistrate? He would nevertheless have been bound to send the case for trial, because by the statute the truth of the libel does not constitute a defence until the statutory conditions are complied with, and they cannot be complied with at that stage of the inquiry" (e).

It is clear, then, that the only cases in which a magistrate can receive evidence of the truth of the libel are, (1) where the defendant is charged under sect. 4 of Lord Campbell's Act with maliciously publishing a defamatory libel, *knowing the same to be false* (f); and (2) upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, by virtue of sect. 4 of the Newspaper Libel and Registration Act, 1881. It must be remembered that this section is, however, limited in its application, owing to the special meaning to be attached to the term "newspaper." (See Part I., Article 16, Note 1, p. 28, *supra*.) If there be a committal the accused will be released on reasonable bail. If, on the other hand, the case be dismissed, then, inasmuch as by sect. 6 of the Newspaper Libel and Registration Act, 1881, every libel is to be deemed an offence within the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), the Court may be "required to take the recognizance of the prosecutor to prosecute the charge . . . and to transmit such recognizance . . . and depositions to the Court in which such indictment ought to be preferred."

Lastly, we may notice that by sect. 5 of the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict.

(e) See note (c), *ante*.

(f) *Ex parte Ellisen*, not reported, approved by Lush, J., in *Reg. v. Carden* (1879), 5 Q. B. D. 11, 13.

c. 60), where the party charged is the proprietor, publisher, editor, or any person responsible for the publication of the newspaper in which the libel has appeared, he may, after he is shown to have been guilty, and if the Court thinks the libel trivial, elect to be summarily dealt with—in which case the Court may summarily convict him, and adjudge him to pay a fine not exceeding 50*l*. It is difficult, however, to see the practical utility of the above provision, for it is only applicable when the Court of summary jurisdiction “is of opinion . . . that the libel was of a trivial character,” and it is surely most improbable that in such a case the judge in chambers would make the preliminary order for a criminal prosecution, which must be “first had and obtained” under sect. 8 of the Law of Libel Amendment Act, 1888. (See Part II., Article 4.)



## APPENDIX B.—STATUTES.

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### MR. FOX'S ACT, 32 GEO. III. c. 60.

#### *An Act to remove Doubts respecting the Functions of Juries in cases of Libel.*

WHEREAS doubts have arisen whether on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the king and the defendant or defendants, on the plea of not guilty pleaded, it be competent to the jury impanelled to try the same to give their verdict upon the whole matter in issue: Be it therefore declared and enacted by the king's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that on every such trial, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information; and shall not be required or directed, by the Court or judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged

#### Preamble.

On the trial of an indictment for a libel the jury may give a general verdict upon the whole matter put in issue, and shall not be required by the Court to find the defendant guilty merely on proof of the publication and of the sense ascribed to it in the information.

to be a libel, and of the sense ascribed to the same in such indictment or information. [Page 66, *supra*.]

But the Court shall give their opinion and directions on the matter in issue as in other criminal cases.

2. Provided always, that, on every such trial, the Court or judge before whom such indictment or information shall be tried, shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue between the king and the defendant or defendants, in like manner as in other criminal cases.

Jury may find a special verdict.

3. Provided also, that nothing herein contained shall extend or be construed to extend to prevent the jury from finding a special verdict, in their discretion, as in other criminal cases. [Page 66, *supra*.]

Defendants may move in arrest of judgment, as before passing this Act.

4. Provided also, that in case the jury shall find the defendant or defendants guilty, it shall and may be lawful for the said defendant or defendants to move in arrest of judgment on such ground and in such manner as by law he or they might have done before the passing of this Act; anything herein contained to the contrary notwithstanding.

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39 Geo. III. c. 79.

Not to extend to papers printed by authority of Parliament.

28. Nothing in this Act contained shall extend, or be construed to extend, to any papers printed by the authority and for the use of either House of Parliament.

Printers to keep a copy of every paper they print, and write thereon the name and abode of their employer.

29. Every person who shall print any paper for hire, reward, gain or profit, shall carefully preserve and keep one copy (at least) of every paper so printed by him or her, on which he or she shall write, or cause to be written or printed, in fair and legible characters, the name and place of abode of the person or persons by whom he or she shall be employed to print the same, and every person printing any paper for hire, reward, gain or profit, who shall omit or neglect to write, or cause to be written or

printed as aforesaid, the name and place of abode of his or her employer on one of such printed papers, or to keep or preserve the same for the space of six calendar months next after the printing thereof, or to produce and show the same to any justice of the peace, who, within the said space of six calendar months, shall require to see the same, shall for every such omission, neglect, or refusal, forfeit and lose the sum of twenty pounds. (Page 5, *supra*.)

Penalty of 20*l*. for neglect or refusing to produce the copy within six months.

**31.** Nothing herein contained shall extend to the impression of any engraving, or to the printing by letter-press of the name, or the name and address, or business or profession, of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise.

Not to extend to impressions of engravings, or the printing names and addresses.

**34.** No person shall be prosecuted or sued for any penalty imposed by this Act, unless such prosecution shall be commenced, or such action shall be brought, within three calendar months next after such penalty shall have been incurred.

Prosecutions to be commenced within three months after penalty is incurred.

**35.** And any pecuniary penalty imposed by this Act, and not exceeding the sum of twenty pounds, shall and may be recovered before any justice or justices of the peace for the county, stewartry, riding, division, city, town, or place in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way.

Recovery of penalties.

**36.** All pecuniary penalties hereinbefore imposed by this Act shall, when recovered in a summary way before any justice (*a*), be applied and disposed of in manner hereinafter mentioned; that is to say, one moiety thereof to the informer before any justice, and the other moiety thereof to his Majesty, his heirs and successors (*b*).

Application of penalties.

(*a*) See 9 & 10 Vict. c. 33, s. 1, at p. 89, *infra*.

(*b*) The above sections are re-enacted by the 32 & 33 Vict. c. 24, Sched. II.

## 60 GEO. III. &amp; 1 GEO. IV. c. 8.

## Preamble.

Court to make order for the seizure of copies of the libel in possession of the persons against whom verdicts shall have been had, &c.

WHEREAS it is expedient to make more effectual provision for the punishment of blasphemous and seditious libels: Be it enacted by the king's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, in every case in which any verdict or judgment by default shall be had against any person for composing, printing, or publishing any blasphemous libel, or any seditious libel, tending to bring into hatred or contempt the person of his Majesty, his heirs, or successors, or the Regent, or the government and constitution of the United Kingdom as by law established, or either House of Parliament, or to excite his Majesty's subjects to attempt the alteration of any matter in church or state as by law established otherwise than by lawful means, it shall be lawful for the judge, or the Court before whom or in which such verdict shall have been given, or the Court in which such judgment by default shall be had, to make an order for the seizure and carrying away and detaining in safe custody in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use; evidence upon oath having been previously given to the satisfaction of such Court or judge that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace, or for any constable, or other peace officer acting under any such order, or for any person or persons acting with or in aid of any such justice

[See page 59, *supra*.]

Evidence of possession being given upon oath.

of the peace, constable, or other peace officer, to search for any copies of such libel in any house, building, or other place whatsoever belonging to the person against whom any such verdict or judgment shall have been had, or to any other person so named in whose possession any copies of any such libel belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused, or not obtained within a reasonable time after it shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody until the same shall be restored under the provisions of this Act, or disposed of according to any further order made in relation thereto.

In case of refusal of admission, proceedings.

2. And be it further enacted, that if in any such case as aforesaid, judgment shall be arrested, or if, after judgment shall have been entered, the same shall be reversed upon any writ of error, all copies so seized shall be forthwith returned to the person or persons from whom the same shall have been so taken as aforesaid, free of all charge and expense, and without the payment of any fees whatever: and in every case in which final judgment shall be entered upon the verdict so found against the person or persons charged with having composed, printed, or published such libel, then all copies so seized shall be disposed of as the Court in which such judgment shall be given shall order and direct.

In what case copies of libels seized restored without fee, &c., or disposed of as Court shall direct.

4. And be it further enacted, that if any person shall, after the passing of this Act, be legally convicted of having after the passing of this Act composed, printed, or published any blasphemous libel or any such seditious libel as aforesaid, and shall after being so convicted, offend a second time, and be thereof legally convicted before any commission of oyer and terminer or gaol delivery, or in his Majesty's Court of King's Bench, such person may, on

Second offence.

**Punishment.**

such second conviction, be adjudged, at the discretion of the Court, either to suffer such punishment as may now by law be inflicted in cases of high misdemeanors, or to be banished from the United Kingdom and all other parts of his Majesty's dominions, for such term of years as the Court in which such conviction shall take place shall order.

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## 6 &amp; 7 WILL. IV. c. 76.

Discovery of  
proprietors,  
printers, or  
publishers of  
newspapers  
may be en-  
forced by bill,  
&c.

19. If any person shall file any bill in any Court for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it shall not be lawful for the defendant to plead or demur to such bill, but such defendant shall be compellable to make the discovery required; provided always, that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant, save only in that proceeding for which the discovery is made (a).

(a) This section was re-enacted by 32 & 33 Vict. c. 24, Sched. II., and is still the law. The original statute, 6 & 7 Will. IV. c. 76, was entirely repealed, no reference, however, being made to this section.

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## 2 &amp; 3 VICT. c. 12.

**2.** Every person who shall print any paper or book whatsoever, which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book which shall consist of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing, any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall for every copy of such paper so printed by him or her forfeit a sum not more than five pounds : Provided always, that nothing herein contained shall be construed to impose any penalty upon any person for printing any paper excepted out of the operation of the said Act of the thirty-ninth year of King George the Third, chapter seventy-nine, either in the said Act, or by any Act made for the amendment thereof. [See Part I., Article 5, p. 4, *supra*.]

Penalty upon printers for not printing their name and residence on every paper or book; and on persons publishing the same.

Proviso.

**3.** In the case of books or papers printed at the University Press of Oxford, or the Pitt Press of Cambridge, the printer, instead of printing his name thereon, shall print the following words, "Printed at the University Press, Oxford," or "The Pitt Press, Cambridge," as the case may be.

As to books or papers printed at the University Presses.

**4.** Provided always, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of her Majesty's Courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine, penalty, or forfeiture made or

No actions for penalties to be commenced, except in the name of the Attorney or Solicitor-General in England or

the Queen's  
Advocate in  
Scotland.

incurred, or which may hereafter be incurred under the provisions of this Act, unless the same be commenced, prosecuted, entered, or filed in the name of her Majesty's Attorney-General, or Solicitor-General in that part of Great Britain called England, or her Majesty's Advocate for Scotland (as the case may be respectively); and if any action, bill, plaint, or information shall be commenced, prosecuted, or filed in the name or names of any other person or persons than is or are in that behalf before mentioned, the same and every proceeding thereupon had are hereby declared and the same shall be null and void to all intents and purposes (a).

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3 & 4 VICT. c. 9.

*An Act to give Summary Protection to Persons employed in the Publication of Parliamentary Papers.*

Preamble.

WHEREAS it is essential to the due and effectual exercise and discharge of the functions and duties of Parliament, and to the promotion of wise legislation, that no obstructions or impediments should exist to the publication of such of the reports, papers, votes, or proceedings of either House of Parliament, as such House of Parliament may deem fit or necessary to be published; and whereas obstructions or impediments to such publication have arisen and hereafter may arise by means of civil or criminal proceedings being taken against persons employed by or acting under the authority of the Houses of Parliament or one of them, in the publication of such reports, papers, votes, or proceedings; by reason and for

(a) The above sections are re-enacted by 32 & 33 Vict. c. 24, Sched. II.



remedy whereof it is expedient that more speedy protection should be afforded to all persons acting under the authority aforesaid, and that all such civil or criminal proceedings should be summarily put an end to, and determined in manner hereinafter mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful for any person or persons who now is or are, or hereafter shall be, a defendant or defendants in any civil or criminal proceedings commenced or prosecuted in any manner soever, for or on account, or in respect of the publication of any such report, paper, votes, or proceedings by such person or persons, or by his, her, or their servant or servants by or under the authority of either House of Parliament, to bring before the Court in which such proceeding shall have been or shall be so commenced or prosecuted, or before any judge of the same (if one of the superior Courts at Westminster), first giving twenty-four hours' notice of his intention so to do to the prosecutor or plaintiff in such proceeding, a certificate under the hand of the Lord High Chancellor of Great Britain, or the Lord Keeper of the Great Seal, or of the Speaker of the House of Lords for the time being, or of the Clerk of the Parliaments, or of the Speaker of the House of Commons, or of the Clerk of the same House, stating that the report, paper, votes; or proceedings, as the case may be, in respect whereof such civil or criminal proceeding shall have been commenced or prosecuted, was published by such person or persons, or by his, her, or their servant or servants by order or under the authority of the House of Lords, or of the House of Commons, as the case may be, together with an affidavit verifying such certificate; and such Court or judge shall thereupon immediately stay such civil or criminal proceeding, and the same, and every writ or process issued therein shall be,

Proceedings criminal or civil against persons for publication of papers printed by order of Parliament to be stayed upon delivery of a certificate and affidavit to the effect that such publication is by order of either House of Parliament.

and shall be deemed and taken to be, finally put an end to, determined and superseded by virtue of this Act. (See Part I., Article 15, p. 26, *supra*.)

Proceedings to be stayed when commenced in respect of a copy of an authenticated report, &c.

2. And be it enacted, that in case of any civil or criminal proceeding hereafter to be commenced or prosecuted for or on account or in respect of the publication of any copy of such report, paper, votes, or proceedings, it shall be lawful for the defendant or defendants at any stage of the proceedings to lay before the Court or judge such report, paper, votes, or proceedings, and such copy, with an affidavit verifying such report, paper, votes or proceedings, and the correctness of such copy, and the Court or judge shall immediately stay such civil or criminal proceeding, and the same, and every writ or process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this Act. (See Part I., Article 15, p. 26, *supra*.)

In proceedings for printing any extract, &c., it may be shown that extract was *bond fide* made.

3. And be it enacted, that it shall be lawful in any civil or criminal proceeding to be commenced or prosecuted for printing any extract from or abstract of such report, paper, votes, or proceedings, to give in evidence under the general issue such report, paper, votes, or proceedings, and to show that such extract or abstract was published *bond fide* and without malice; and if such shall be the opinion of the jury, a verdict of not guilty shall be entered for the defendant or defendants. (See Part I., Article 15, p. 26, *supra*.)

Act not to affect privileges of Parliament.

4. Provided always, and it is hereby expressly declared and enacted, that nothing herein contained shall be deemed or taken, or held, or construed, directly or indirectly, by implication or otherwise, to affect the privileges of Parliament in any manner whatsoever.

## LORD CAMPBELL'S ACT (6 &amp; 7 VICT. c. 96).

*An Act to amend the Law respecting Defamatory Words and Libel.*

For the better protection of private character, and for more effectually securing the liberty of the press, and for better preventing abuses in exercising the said liberty, Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in any action for defamation it shall be lawful for the defendant (after notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the plea in such action) to give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology. (See Part I., Article 27, p. 47, *supra*.)

Offer of an apology admissible in evidence in mitigation of damages.

2. And be it enacted, that in an action for a libel contained in any public newspaper or other periodical publication, it shall be competent to the defendant to plead that such libel was inserted in such newspaper or other periodical publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel, or if the newspaper or periodical publication in which the said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said

In an action against a newspaper for libel, the defendant may plead that it was inserted without malice and without neglect, and may pay money into Court as amends.

[The words in italics were repealed by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), Schedule, Part II.]

3 & 4 Will. 4, c. 42.

apology in any newspaper or periodical publication, to be selected by the plaintiff in such action; *and that every such defendant shall, upon filing such plea, be at liberty to pay into Court a sum of money by way of amends for the injury sustained by the publication of such libel, and such payment into Court shall be of the same effect, and be available in the same manner and to the same extent, and be subject to the same rules and regulations as to payment of costs and the form of pleading, except so far as regards the pleading of the additional facts hereinbefore required to be pleaded by such defendant, as if actions for libel had not been excepted from the personal actions in which it is lawful to pay money into Court under an Act passed in the session of Parliament held in the fourth year of his late Majesty, intituled "An Act for the further Amendment of the Law, and better Advancement of Justice;"* and that to such plea to such action it shall be competent to the plaintiff to reply generally, denying the whole of such plea. (See Part I., Article 21, p. 42, *supra*.)

Publishing or threatening to publish a libel, &c., with intent to extort money, punishable by imprisonment with hard labour.

**3.** And be it enacted, that if any person shall publish or threaten to publish any libel upon any other person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing, of any matter or thing touching any other person, with intent to extort any money or security for money, or any valuable thing, from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, every such offender, on being convicted thereof, shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years; provided always that nothing herein contained shall in any manner alter or affect any law now in force in respect of the sending or delivery of threatening letters or writings.

4. And be it enacted, that if any person shall maliciously publish any defamatory libel, knowing the same to be false, every such person, being convicted thereof, shall be liable to be imprisoned in the common gaol or house of correction for any term not exceeding two years, and to pay such fine as the Court shall award. (See pp. 55, 71, *supra*.)

Punishment  
of false  
defamatory  
libel,

5. And be it enacted, that if any person shall maliciously publish any defamatory libel, every such person, being convicted thereof, shall be liable to fine or imprisonment, or both, as the Court may award, such imprisonment not to exceed the term of one year. (See p. 55, *supra*.)

and of  
malicious  
defamatory  
libel.

6. And be it enacted, that on the trial of any indictment or information for a defamatory libel, the defendant having pleaded such a plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published; and that to entitle the defendant to give evidence of the truth of such matters charged as a defence to such indictment or information, it shall be necessary for the defendant, in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege that it was for the public benefit that the said matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof; and that if, after such plea, the defendant shall be convicted on such indictment or information, it shall be competent to the Court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea, and by the evidence given to prove or to disprove the same; provided always, that the

Proceedings  
upon the trial  
of an indictment  
or information for a  
defamatory  
libel.

Double plea.

Plea of not guilty in civil and criminal proceedings.

truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification; provided also, that in addition to such plea it shall be competent to the defendant to plead a plea of not guilty; provided also, that nothing in this Act contained shall take away or prejudice any defence under the plea of not guilty, which it is now competent to the defendant to make under such plea, to any action or indictment, or information for defamatory words or libel. (See Part II., Article 6, p. 64, *supra*.)

Evidence to rebut *prima facie* case of publication by an agent.

7. And be it enacted, that whensoever, upon the trial of any indictment or information for the publication of a libel under the plea of not guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part. (See Part II., Article 7, p. 64, *supra*.)

On prosecution for private libel defendant entitled to costs on acquittal.

8. And be it enacted, that in the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information; and that upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea, such costs so to be recovered by the defendant or prosecutor respectively to be taxed by the proper officer of the Court before which the said indictment or information is tried.

Interpretation of Act.

9. And be it enacted, that wherever throughout this

Act, in describing the plaintiff or the defendant, or party affected or intended to be affected by the offence, words are used importing the singular number or the masculine gender only, yet they shall be understood to include several persons as well as one person, and females as well as males, unless when the nature of the provision or the context of the Act shall exclude such construction.

10. And be it enacted, that this Act shall take effect from the first day of November next; and that nothing in this Act contained shall extend to Scotland. Commence-  
ment and  
extent of Act.

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8 & 9 VICT. c. 75.

*An Act to amend an Act passed in the session of Parliament held in the sixth and seventh years of the reign of her present Majesty, intituled "An Act to amend the Law respecting Defamatory Words and Libel."*

WHEREAS by an Act passed in the session of Parliament held in the sixth and seventh years of the reign of her present Majesty, intituled "An Act to amend the Law respecting Defamatory Words and Libel," it is amongst other things enacted and provided that the defendant, in an action for a libel contained in any public newspaper, or other periodical publication, may plead certain matters therein mentioned, and may upon filing such plea be at liberty to pay into Court a sum of money by way of amends for the injury sustained by the publication of such libel; and it is thereby further enacted, that such payment into Court shall be of the same effect, and be available in the same manner and to the same extent, and be subject to the same rules and regulations as to payment of costs and the form of pleading, except so far as regards the pleading of the additional facts thereinbefore required to be pleaded by such defendant, as if actions for libel had not been excepted from the personal actions in which it is

6 & 7 Vict.  
c. 96.

lawful to pay money into Court under an Act passed in the session of Parliament held in the fourth year of his late Majesty, intituled "An Act for the further amendment of the Law and the better Advancement of Justice;" and whereas the said Act of the fourth year of the reign of his late Majesty relates only to proceedings in the superior Courts in England, but by an Act passed in the session of Parliament held in the third and fourth years of the reign of her present Majesty, intituled "An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain cases, for extending the Remedies of Creditors against the Property of Debtors, and for the further Advancement of Justice," in Ireland, a like provision is made for payment of money into Court in all personal actions pending in any of the Superior Courts in Ireland as is contained in the said Act of the fourth year of the reign of his late Majesty in regard to actions pending in the Superior Courts in England, with a like exception of actions for libel; and it is expedient to prevent any doubts as to the application of the said recited Act of the sixth and seventh years of the reign of her present Majesty to actions pending in the Superior Courts in Ireland, which may be created by reason of the omission of a reference in the last-mentioned Act to the said Act of the third and fourth years of the reign of her present Majesty: Be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that where in any action pending in the Superior Courts in Ireland for a libel contained in any public newspaper or other periodical publication, the defendant shall plead the matters allowed to be pleaded by the said first-mentioned Act, and shall on filing such plea pay money into Court as provided by such Act, such payment into Court shall be of the same effect and be available in the same manner and to the same extent, and be subject to the same rules and

3 & 4 Will. 4,  
c. 42.

3 & 4 Vict.  
c. 105, s. 46,  
repealed by  
Stat. Law  
Rev. Act,  
1875.

In cases of  
action for  
libel in  
Ireland where  
defendant  
shall plead  
matters  
allowed by  
3 & 4 Will. 4,  
c. 42, and pay  
money into  
Court, such  
payment to be  
of the effect as  
if required by  
said Act.



regulations now in force, or hereafter to be made, as to payment of costs and the form of pleading, except so far as regards the pleading of the additional facts so required to be pleaded by such defendant, as if actions for libel had not been excepted from the personal actions in which it is lawful to pay money into Court under the said recited Act of the third and fourth years of the reign of her present Majesty.

2. And be it declared and enacted, that it shall not be competent to any defendant in such action, whether in England or in Ireland, to file any such plea without at the same time making a payment of money into Court by way of amends, *as provided by the said Act*, but every such plea so filed without payment of money into Court shall be deemed a nullity, and may be treated as such by the plaintiff in the action. (See Part I., Article 21, p. 42, *supra*.)

Defendant not to file such plea without paying money into Court by way of amends.

[Words in italics repealed by Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 69), Sched. Part II.]

### 9 & 10 VICT. c. 33.

1. It shall not be lawful for any person or persons to commence, prosecute, enter, file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of her Majesty's Courts, or before any justice or justices of the peace, against any person or persons for the discovery of any fine which may hereafter be incurred under the provisions of the Act of the thirty-ninth year of King George the Third, chapter seventy-nine, set out in this Act, unless the same be commenced, prosecuted, entered, or filed in the name of her Majesty's Attorney-General or Solicitor-General in England, or her Majesty's Lord Advocate in Scotland, and every action, bill, plaint, or information, which shall be commenced, prosecuted, entered, or filed in the name or

Proceedings under 39 Geo. 3, c. 79, shall not be commenced unless in the name of the law officers of the Crown.

names of any other person or persons than is in that behalf before mentioned, and every proceeding thereupon had, shall be null and void to all intents and purposes (a). (See pp. 74, 75, *supra*.)

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11 & 12 VICT. c. 12.

*An Act for the better Security of the Crown and Government of the United Kingdom.*

Offences  
declared  
felonies by  
this Act to be  
punishable  
by transpor-  
tation or im-  
prisonment.

3. And be it enacted, that if any person whatsoever, after the passing of this Act, shall within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most Gracious Lady the Queen, her heirs or successors, from the style, honour, or royal name of the imperial crown of the United Kingdom, or of any other of her Majesty's dominions and countries, or to levy war against her Majesty, her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe both Houses or either House of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom, or any other of her Majesty's dominions or countries under the obeisance of her Majesty, her heirs or successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by open or advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his or her natural life,

(a) This section is re-enacted by the 32 & 33 Vict. c. 24, Schedule II.

or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the Court shall direct. (See pp. 57, 59, *supra*.)

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15 & 16 VICT. c. 76, s. 61.

IN actions of libel and slander, the plaintiff shall be at liberty to aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense; and such averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient. (See Part I., Article 2, p. 2, *supra*.)

Declaration  
for libel or  
slander.

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20 & 21 VICT. c. 83.

WHEREAS it is expedient to give additional powers for the suppression of the trade in obscene books, prints, drawings, and other obscene articles: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for any metropolitan police magistrate or other stipendiary magistrate, or for any two justices of the peace, upon complaint made before him or them, upon oath, that the complainant has reason to believe, and does believe, that any obscene books, papers, writings, prints, pictures, drawings, or other representa-

Justices, &c.,  
may authorize  
search of  
suspected  
premises.

tions, are kept in any house, shop, room, or other place, within the limits of the jurisdiction of any such magistrate or justices, for the purpose of sale or distribution, exhibition for purposes of gain, lending upon hire, or being otherwise published for purposes of gain, which complainant shall also state upon oath that one or more articles of the like character have been sold, distributed, exhibited, lent, or otherwise published as aforesaid, at or in connection with such place, so as to satisfy such magistrate or justices that the belief of the said complainant is well founded, and upon such magistrate or justices being also satisfied that any of such articles so kept for any of the purposes aforesaid are of such a character and description that the publication of them would be a misdemeanor, and proper to be prosecuted as such, to give authority by special warrant to any constable or police officer into such house, shop, room, or other place, with such assistance as may be necessary, to enter in the day-time, and if necessary to use force, by breaking open doors or otherwise, and to search for and seize all such books, papers, writings, prints, pictures, drawings, or other representations as aforesaid, found in such house, shop, room, or other place, and to carry all the articles so seized before the magistrate, or justices issuing the said warrant, or some other magistrate or justices exercising the same jurisdiction; and such magistrate or justices shall thereupon issue a summons, calling upon the occupier of the house or other place which may have been so entered, by virtue of the said warrant, to appear within seven days before such police stipendiary magistrate or any two justices in petty sessions for the district, to show cause why the articles so seized should not be destroyed; and if such occupier or some other person claiming to be the owner of the said articles shall not appear within the time aforesaid, or shall appear, and such magistrate or justices shall be satisfied that such articles, or any of them, are of the character stated in the warrant, and that such, or any of them, have

been kept for any of the purposes aforesaid, it shall be lawful for the said magistrate or justices, and he or they are hereby required, to order the articles so seized, except such of them as he or they may consider necessary to be preserved as evidence in some further proceeding, to be destroyed at the expiration of the time hereinafter allowed for lodging an appeal, unless notice of appeal as herein-after mentioned be given, and such articles shall be in the meantime impounded; and if such magistrate or justices shall be satisfied that the articles seized are not of the character stated in the warrant, or have not been kept for any of the purposes aforesaid, he or they shall forthwith direct them to be restored to the occupier of the house or other place in which they were seized.

2. No plaintiff shall recover in any action for any irregularity, trespass, or other wrongful proceeding, made or committed in the execution of this Act, or in, under, or by virtue of any authority hereby given, if tender of sufficient amends shall have been made by or on behalf of the party who shall have committed such irregularity, trespass, or other wrongful proceeding, before such action brought; and in case no tender shall have been made, it shall be lawful for the defendant in any such action, by leave of the Court where such action shall depend, at any time before issue joined, to pay into Court such sum of money as he shall think fit, whereupon such proceeding, order, and adjudication shall be had and made in and by such Court as in other actions where defendants are allowed to pay money into Court.

Tender of  
amends, &c.

3. No action, suit, or information, or any other proceeding of what nature soever, shall be brought against any person for anything done or omitted to be done in pursuance of this Act, or in the execution of the authorities under this Act, unless notice in writing shall be given by the party intending to prosecute such action, suit, information, or other proceeding to the intended defen-

Limitation of  
actions.

dant, one calendar month at least before prosecuting the same, nor unless such action, suit, information, or other proceeding shall be brought or commenced within three calendar months next after the act or omission complained of, or in case there shall be a continuation of damage, then within three calendar months next after the doing such damage shall have ceased.

Appeal.

4. Any person aggrieved by any act or determination of such magistrate or justices in or concerning the execution of this Act may appeal to the next general or quarter sessions for the county, riding, division, city, borough, or place in and for which such magistrate or justices shall have so acted, giving to the magistrate or justices of the peace whose act or determination shall be appealed against, notice in writing of such appeal and of the grounds thereof, within seven days after such act or determination, and before the next general or quarter sessions, and entering within such seven days into a recognizance with sufficient surety before a justice of the peace for the county, city, borough, or place in which such act or determination shall have taken place, personally to appear and prosecute such appeal, and to abide the order of, and pay such costs as shall be awarded by such Court of Quarter Sessions, or any adjournment thereof, and the Court at such general or quarter sessions shall hear and determine the matter of such appeal, and shall make such order therein as shall to the said Court seem meet; and such Court, upon hearing and finally determining such appeal, shall and may according to their discretion award such costs to the party appealing or appealed against as they shall think proper; and if such appeal be dismissed or decided against the appellant, or be not prosecuted, such Court may order the articles seized forthwith to be destroyed: provided always, that it shall not be lawful for the appellant on the hearing of any such appeal to go into or give evidence of any other grounds of appeal against any such order, act,

or determination than those set forth in such notice of appeal.

5. This Act shall not extend to Scotland.

Limitation of  
Act.

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44 & 45 VICT. C. 60.

*An Act to amend the Law of Newspaper Libel, and to provide for the Registration of Newspaper Proprietors.*

WHEREAS it is expedient to amend the law affecting civil actions and criminal prosecutions for newspaper libel:

And whereas it is also expedient to provide for the registration of newspaper proprietors:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words and phrases hereinafter mentioned shall have and include the meanings following; (that is to say),

Interpreta-  
tion.

The word "registrar" shall mean in England the registrar for the time being of joint stock companies, or such person as the Board of Trade may for the time being authorize in that behalf, and in Ireland the assistant registrar for the time being of joint stock companies for Ireland, or such person as the Board of Trade may for the time being authorize in that behalf.

The phrase "registry office" shall mean the principal office for the time being of the registrar in England or Ireland, as the case may be, or such other office as the Board of Trade may from time to time appoint.

The word "newspaper" shall mean any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts, or numbers.

Also any paper printed in order to be dispersed, and made public weekly or oftener, or at intervals not exceeding twenty-six days, containing only or principally advertisements. (See p. 28, *supra*.)

The word "occupation" when applied to any person shall mean his trade or following, and if none, then his rank or usual title, as esquire, gentleman.

The phrase "place of residence" shall include the street, square, or place where the person to whom it refers shall reside, and the number (if any) or other designation of the house in which he shall so reside.

The word "proprietor" shall mean and include as well the sole proprietor of any newspaper, as also in the case of a divided proprietorship the persons who, as partners or otherwise, represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein, and no other person.

Newspaper reports of certain meetings privileged.

[This section was repealed by 51 & 52 Vict. c. 64, s. 2.]

**2.** *Any report published in any newspaper of the proceedings of a public meeting shall be privileged, if such meeting was lawfully convened for a lawful purpose and open to the public, and if such report was fair and accurate, and published without malice, and if the publication of the matter complained of was for the public benefit; provided always, that the protection intended to be afforded by this section shall not be available as a defence in any proceeding, if the plaintiff or prosecutor can show that the defendant has refused to insert in the newspaper in which the report containing the matter complained of appeared a reasonable letter or statement of ex-*



*planation or contradiction by or on behalf of such plaintiff or prosecutor.* (See 51 & 52 Vict. c. 64, s. 4, p. 103, *infra*.)

3. *No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein, without the written fiat or allowance of the Director of Public Prosecutions in England or her Majesty's Attorney-General in Ireland being first had and obtained.* (See p. 61, *supra*.)

No prosecution for newspaper libel without fiat of Attorney-General.

[This section was repealed by 61 & 52 Vict. c. 64, s. 8.]

4. A Court of summary jurisdiction, upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or any other Act, or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment, and the Court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case. (See App. A., p. 70, *supra*.)

Inquiry by court of summary jurisdiction as to libel being for public benefit or being true.

5. If a Court of summary jurisdiction upon the hearing of a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper for a libel published therein is of opinion that though the person charged is shown to have been guilty the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the Court shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" and, if such person assents to the case being dealt with summarily, the Court may summarily convict

Provision as to summary conviction for libel.

him and adjudge him to pay a fine not exceeding fifty pounds. (See App. A., pp. 71, 72, *supra*.)

42 & 43 Vict.  
c. 49.

Section twenty-seven of the Summary Jurisdiction Act, 1879, shall, so far as is consistent with the tenor thereof, apply to every such proceeding as if it were herein enacted and extended to Ireland, and as if the Summary Jurisdiction Acts were therein referred to instead of the Summary Jurisdiction Act, 1848.

11 & 12 Vict.  
c. 43.

22 & 23 Vict.  
c. 17, made  
applicable to  
this Act.

6. Every libel or alleged libel, and every offence under this Act, shall be deemed to be an offence within and subject to the provisions of the Act of the session of the twenty-second and twenty-third years of the reign of her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanors."

Board of  
Trade may  
authorize  
registration of  
the names of  
only a portion  
of the pro-  
prietors of a  
newspaper.

7. Where, in the opinion of the Board of Trade, inconvenience would arise or be caused in any case from the registry of the names of all the proprietors of the newspaper (either owing to minority, coverture, absence from the United Kingdom, minute subdivision of shares, or other special circumstances), it shall be lawful for the Board of Trade to authorize the registration of such newspaper in the name or names of some one or more responsible "representative proprietors." (See Part I., Article 5, p. 4 *et seq.*, *supra*.)

Register of  
newspaper  
proprietors to  
be established.

8. A register of the proprietors of newspapers as defined by this Act shall be established under the superintendence of the registrar.

Annual  
returns to be  
made.

9. It shall be the duty of the printers and publishers for the time being of every newspaper to make or cause to be made to the Registry Office on or before the thirty-first of July one thousand eight hundred and eighty-one, and thereafter annually in the month of July in every year, a return of the following particulars according to the Schedule A. hereunto annexed ; that is to say,

(a) The title of a newspaper :

- (b) The names of all the proprietors of such newspaper together with their respective occupations, places of business (if any), and places of residence.  
(See p. 5, *supra*.)

**10.** If within the further period of one month after the time herein-before appointed for the making of any return as to any newspaper such return be not made, then each printer and publisher of such newspaper shall, on conviction thereof, be liable to a penalty not exceeding twenty-five pounds, and also to be directed by a summary order to make a return within a specified time.

Penalty for omission to make annual returns.

**11.** Any party to a transfer or transmission of or dealing with any share of or interest in any newspaper whereby any person ceases to be a proprietor or any new proprietor is introduced may at any time make or cause to be made to the Registry Office a return according to the Schedule B. hereunto annexed and containing the particulars therein set forth. (See p. 5, *supra*.)

Power to party to make return.

**12.** If any person shall knowingly and wilfully make or cause to be made any return by this Act required or permitted to be made in which shall be inserted or set forth the name of any person as a proprietor of a newspaper who shall not be a proprietor thereof, or in which there shall be any misrepresentation, or from which there shall be any omission in respect of any of the particulars by this Act required to be contained therein whereby such return shall be misleading, or if any proprietor of a newspaper shall knowingly and wilfully permit any such return to be made which shall be misleading as to any of the particulars with reference to his own name, occupation, place of business (if any), or place of residence, then and in every such case every such offender being convicted thereof shall be liable to a penalty not exceeding one hundred pounds.

Penalty for wilful misrepresentation in or omission from return.

**13.** It shall be the duty of the registrar and he is hereby required forthwith to register every return made in con-

Registrar to enter return in register.

formity with the provisions of this Act in a book to be kept for that purpose at the Registry Office and called "the register of newspaper proprietors," and all persons shall be at liberty to search and inspect the said book from time to time during the hours of business at the Registry Office, and any person may require a copy of any entry in or an extract from the book to be certified by the registrar or his deputy for the time being or under the official seal of the registrar. (See p. 5, *supra*.)

Fees payable  
for registrar's  
services.

14. There shall be paid in respect of the receipt and entry of returns made in conformity with the provisions of this Act, and for the inspection of the register of newspaper proprietors, and for certified copies of any entry therein, and in respect of any other services to be performed by the registrar, such fees (if any) as the Board of Trade with the approval of the Treasury may direct and as they shall deem requisite to defray as well the additional expenses of the Registry Office caused by the provisions of this Act, as also the further remunerations and salaries (if any) of the registrar, and of any other persons employed under him in the execution of this Act, and such fees shall be dealt with as the Treasury may direct. (See p. 5, *supra*.)

Copies of  
entries in and  
extracts from  
register to be  
evidence.

15. Every copy of an entry in or extract from the register of newspaper proprietors, purporting to be certified by the registrar or his deputy for the time being, or under the official seal of the registrar, shall be received as conclusive evidence of the contents of the said register of newspaper proprietors, so far as the same appear in such copy or extract without proof of the signature thereto or of the seal of office affixed thereto, and every such certified copy or extract shall in all proceedings, civil or criminal, be accepted as sufficient *prima facie* evidence of all the matters and things thereby appearing, unless and until the contrary thereof be shown. (See p. 5, *supra*.)

Recovery of

16. All penalties under this Act may be recovered before

NEWSPAPER LIBEL AND REGISTRATION ACT, 1881. 101

a Court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts. penalties and enforcement of orders.

Summary orders under this Act may be made by a Court of summary jurisdiction, and enforced in manner provided by section thirty-four of the Summary Jurisdiction Act, 1879; and, for the purposes of this Act, that section shall be deemed to apply to Ireland in the same manner as if it were re-enacted in this Act.

**17.** The expression “a Court of summary jurisdiction” has in England the meanings assigned to it by the Summary Jurisdiction Act, 1879; and in Ireland means any justice or justices of the peace, stipendiary or other magistrate or magistrates, having jurisdiction under the Summary Jurisdiction Acts. Definitions.

The expression “Summary Jurisdiction Acts” has as regards England the meanings assigned to it by the Summary Jurisdiction Act, 1879; and as regards Ireland, means within the police district of Dublin metropolis the Acts regulating the powers and duties of justices of the peace for such district, or of the police of that district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending the same. 14 & 15 Vict. c. 93.

**18.** The provisions as to the registration of newspaper proprietors contained in this Act shall not apply to the case of any newspaper which belongs to a joint stock company duly incorporated under and subject to the provisions of the Companies Acts, 1862 to 1879. (See p. 5, *supra*.) Provisions as to registration of newspaper proprietors not to apply to newspaper belonging to a joint stock company.

**19.** This Act shall not extend to Scotland. 25 & 26 Vict. c. 89, &c.

**20.** This Act may for all purposes be cited as the Newspaper Libel and Registration Act, 1881. Act not to extend to Scotland. Short title.

[SCHEDULES.]

The SCHEDULES to which this Act refers.

SCHEDULE A.

Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of the Newspaper.	Names of the Proprietors.	Occupations of the Proprietors.	Places of business (if any) of the Proprietors.	Places of Residence of the Proprietors.

SCHEDULE B.

Return made pursuant to the Newspaper Libel and Registration Act, 1881.

Title of Newspaper.	Names of Persons who cease to be Proprietors.	Names of Persons who become Proprietors.	Occupation of new Proprietors.	Places of business (if any) of new Proprietors.	Places of Residence of new Proprietors.

51 &amp; 52 VICT. c. 64.

*An Act to amend the Law of Libel.*

WHEREAS it is expedient to amend the law of libel: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In the construction of this Act the word "newspaper" shall have the same meaning as in the Newspaper Libel and Registration Act, 1881. (See pp. 28, 96, *supra*.)

Interpretation.

2. Section two of the Newspaper Libel and Registration Act, 1881, is hereby repealed. (See p. 96, *supra*.)

Repeal of  
44 & 45 Vict.  
c. 60, s. 2.

3. A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter. (See Part I., Article 16, and notes thereto, p. 26 *et seq.*)

Newspaper  
reports of pro-  
ceedings in  
Court privi-  
leged.

4. A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorized to act by letters patent, Act of Parliament, warrant under the Royal Sign Manual, or other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative pur-

Newspaper  
reports of pro-  
ceedings of  
public meet-  
ings and of  
certain bodies  
and persons  
privileged.

poses, and the publication at the request of any Government office or department, officer of state, commissioner of police, or chief constable, of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously: Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter: Provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same: Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

For the purposes of this section "public meeting" shall mean any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted. (See Part I., Articles 18, 19, 20, and notes thereto, pp. 34—42, *supra*.)

Consolidation  
of actions.

5. It shall be competent for a judge or the Court, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect to the same, or substantially the same, libel shall also be entitled



to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated. (See Part I., Article 28, p. 50, *supra*.)

In a consolidated action under this section the jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they shall have so found between and against the said last-mentioned defendants; and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants. (See Part I., Article 29, p. 52, *supra*.)

6. At the trial of an action for a libel contained in any newspaper the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions for) damages or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought. (See Part I., Article 27, p. 47, *supra*.)

Power to defendant to give certain evidence in mitigation of damages.

7. It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passages, but it shall be sufficient to deposit the book, newspaper, or other documents containing the alleged libel with the indictment or other judicial proceeding, together with particulars showing precisely by reference to pages, columns, and lines in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings

Obscene matter need not be set forth in indictment or other judicial proceeding.

may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding (a).

Repeal of  
44 & 45 Vict.  
c. 60, s. 3.  
Order of  
judge re-  
quired for  
prosecution of  
newspaper  
proprietor, &c.

8. Section three of the forty-fourth and forty-fifth Victoria, chapter sixty, is hereby repealed, and instead thereof be it enacted that no criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a Judge at Chambers being first had and obtained.

Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application. (See Part II., Article 4, and note thereto, p. 61, *supra*.)

Person pro-  
ceeded against  
criminally a  
competent  
witness.

9. Every person charged with the offence of libel before any court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent, but not compellable, witnesses on every hearing at every stage of such charge (b).

Extent of Act.

10. This Act shall not apply to Scotland.

Short title.

11. This Act may be cited as the Law of Libel Amendment Act, 1888.

(a) This provision is aimed at preventing the recurrence of cases like *Bradlaugh and Besant v. The Queen* (1878) (C. A.), 3 Q. B. D. 607; 48 L. J. M. C. 5; 26 W. R. 410; 38 L. T. 118; 14 Cox, C. C. 68, where the appellants were indicted for publishing an obscene book and were convicted, but the Court for Crown Cases Reserved subsequently quashed the conviction on the technical ground that the obscene passages in the book had not been fully set out in the indictment, the book having been merely referred to therein by name.

(b) This provision effects in the case of libel what in all likelihood will, before long, be the law in regard to *all* criminal offences.

52 & 53 VICT. c. 18.

*An Act to suppress Indecent Advertisements.*

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Indecent Advertisements Act, 1889. Short title.
2. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety. Commencement of Act.
3. Whoever affixes to or inscribes on any house, building, wall, hoarding, gate, fence, pillar, post, board, tree, or any other thing whatsoever so as to be visible to a person being in or passing along any street, public highway, or footpath, and whoever affixes to or inscribes on any public urinal, or delivers or attempts to deliver, or exhibits, to any inhabitant or to any person being in or passing along any street, public highway, or footpath, or throws down the area of any house, or exhibits to public view in the window of any house or shop, any picture or printed or written matter which is of an indecent or obscene nature, shall, on summary conviction in manner provided by the Summary Jurisdiction Acts, be liable to a penalty not exceeding forty shillings, or, in the discretion of the Court, to imprisonment for any term not exceeding one month, with or without hard labour. Summary proceedings against persons affixing, &c. indecent or obscene pictures or printed or written matter.
4. Whoever gives or delivers to any other person any such pictures, or printed or written matter mentioned in section three of this Act, with the intent that the same, or some one or more thereof, should be affixed, inscribed, delivered, or exhibited as therein mentioned, shall, on conviction in manner provided by the Summary Jurisdiction Acts, be liable to a penalty not exceeding five pounds, or, Summary proceedings against persons sending others to do the acts punishable under sect. 3.

in the discretion of the Court, to imprisonment for any term not exceeding three months, with or without hard labour.

Certain advertisements declared indecent.

5. [This section declares that advertisements of a certain specified nature shall be deemed to be printed or written matter within the meaning of section 3 of this Act.]

Constable may arrest on view of offence.

6. Any constable or other peace officer may arrest without warrant any person whom he shall find committing any offence against this Act.

Interpretation.

7. In this Act the expression "Summary Jurisdiction Acts"—

42 & 43 Vict.  
c. 49.

In England means the Summary Jurisdiction (English) Acts within the meaning of the Summary Jurisdiction Act, 1879 ;

27 & 28 Vict.  
c. 53.  
44 & 45 Vict.  
c. 33.

In Scotland means the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Acts amending the same ; and

14 & 15 Vict.  
c. 93.

In Ireland means within the police district of Dublin metropolis the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

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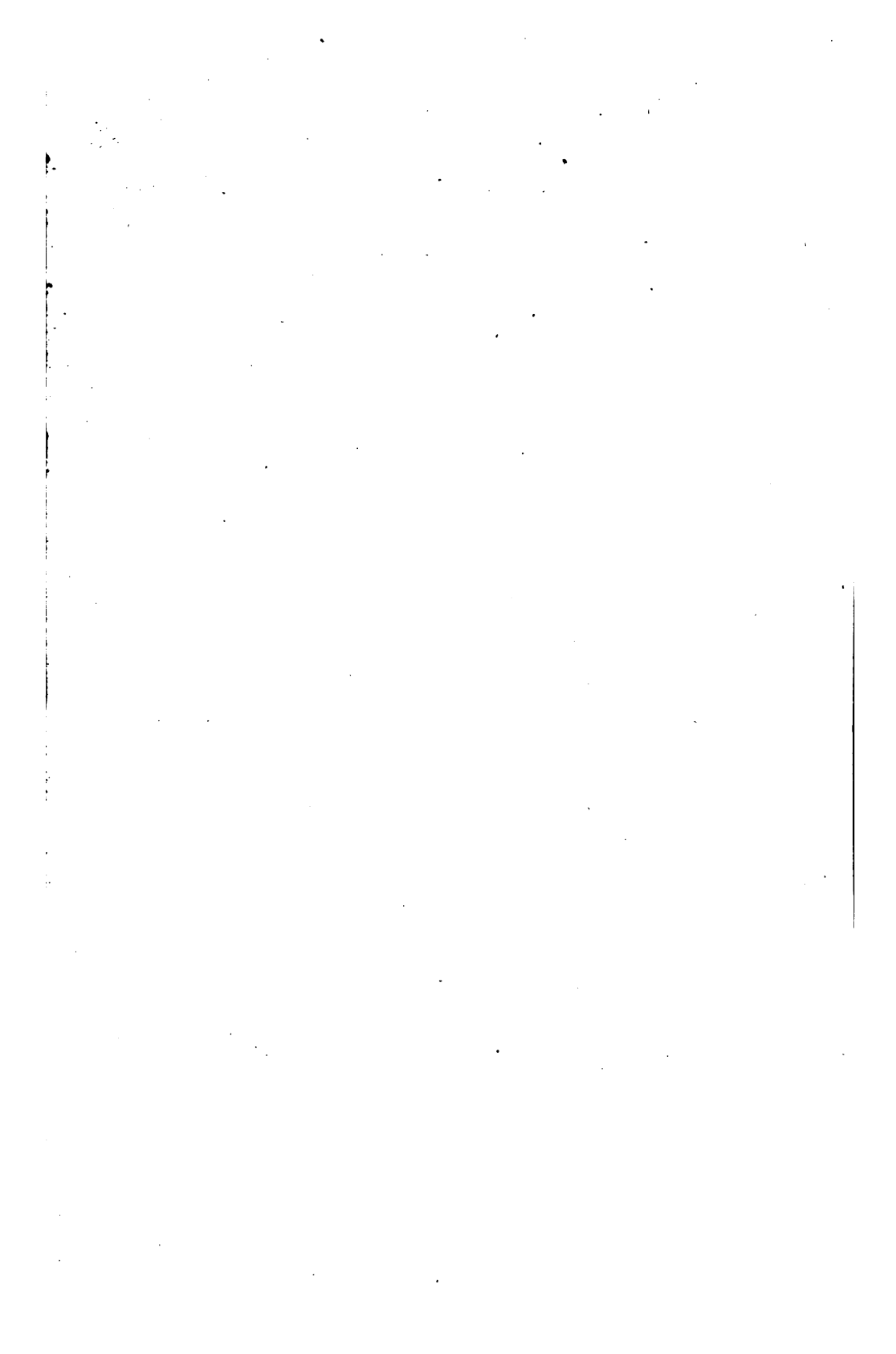
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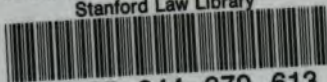
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